

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

JO ANN HOWARD & ASSOCIATES, P.C.,)
et al.,)
)
)
Plaintiffs,)
)
)
VS.) No. 4:09-CV-01252 (ERW)
)
)
J. DOUGLAS CASSITY, et al.,)
)
)
Defendants.)

)

TRIAL PROCEEDINGS -- VOLUME 2-A
BEFORE THE HONORABLE E. RICHARD WEBBER
FEBRUARY 5, 2015
ST. LOUIS, MISSOURI

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1 (Proceedings commenced at 8:30 AM.)

2 THE COURT: Keep your seats. For those who may be
3 here for the first time, there are certain -- When we first
4 start a case and we go through, "All rise," and then after
5 that, I like to, first of all, sort of come and go at breaks.
6 And -- And attorneys have a lot going on, and I don't like
7 them to be interrupted with formalities. I get enough respect
8 from them from the way they conduct themselves, and some of
9 those other things just take more time. So that's what that's
10 all about.

11 Welcome to those of you who are in the gallery this
12 morning. I understand that we may need a few more minutes to
13 set up before ---

14 MR. REILLY: A few more, Your Honor.

15 THE COURT: Pardon me?

16 MR. REILLY: A few more, please.

17 THE COURT: A few more, okay. So we will be a few
18 minutes.

19 Are the jurors here?

20 THE CLERK: They're all here.

21 THE COURT: They're all here, very well. Just let me
22 know when you're ready.

23 MR. REILLY: Thank you.

24 (Court recessed from 8:30 AM until 8:36 AM.)

25 THE COURT: Ready? Okay. Bring them in.

1 MR. REILLY: My apologies.

2 THE COURT: That's okay.

3 I would -- I would request, when the jury comes in,
4 for all to rise when they come through the door, please.

5 (Pause)

6 THE CLERK: Judge, ready?

7 THE COURT: Yes, we are ready.

8 (Jury seated by the Clerk.)

9 THE COURT: Good morning. Please be seated.

10 Thank you for your prompt appearance this morning,
11 and it's good to see you all. I'm from -- originally from
12 northeast Missouri. I called up there this morning, and it's
13 11 below. So if that's any comfort at all, so be it.

14 Would you now, please rise, raise your right hand to
15 take an oath?

16 This oath will require you to try the case according
17 to the law and the evidence as you hear it. If for some
18 reason you can't take the oath, remain standing when the other
19 jurors are seated. Okay.

20 THE CLERK: Please raise your right hands.

21 You do -- You and each of you do solemnly swear or
22 affirm that you will well and truly try the issues on trial
23 before this Court and a true verdict returned according to the
24 law and evidence, so help you God?

25 THE JURY: I do.

1 THE COURT: Please be seated.

2 I will be reading some instructions. You'll be told
3 that all instructions given, whether in writing or otherwise,
4 are equally binding upon you and must be followed. These are
5 called "oral instructions." They will not be taken back to
6 the Jury Room, but, again, all are important whenever given
7 and whether in writing or orally given.

8 Ladies and Gentlemen -- This is No. 1.

9 Ladies and Gentlemen: I will take a few minutes now
10 to give you some initial instructions about this case and
11 about your duties as jurors. At the end of the trial I will
12 give you further instructions. I may also give you
13 instructions during the trial. Unless I specifically tell you
14 otherwise, all such instructions, both those I give you now
15 and those I give you later, are equally binding on you and
16 must be followed.

17 This is a civil case brought by Plaintiffs against
18 Defendants. The Plaintiffs allege that -- make allegations,
19 and you'll be told more about that by counsel.

20 It will be your duty to decide from the evidence
21 whether the Plaintiffs are entitled to a verdict against
22 Defendants. From the evidence, you will decide what the facts
23 are. You are entitled to consider that evidence in the light
24 of your own observations and experiences in the affairs of
25 life. You will then apply those facts to the law which I give

1 you in these and in my other instructions, and in that way
2 reach your verdict. You are the sole judges of the facts, but
3 you must follow the law as stated in my instructions, whether
4 you agree with it or not.

5 In deciding what the facts are, you may have to
6 decide what testimony you believe and what testimony you do
7 not believe. You may believe all of what a witness says or
8 only part of it or none of it. In deciding what testimony to
9 believe, consider the witness' intelligence, their opportunity
10 to have seen or heard the things they testify about, their
11 memories, any motives they may have for testifying a certain
12 way, their manner while testifying, whether they said
13 something different at an earlier time, the general
14 reasonableness of their testimony, and the extent to which
15 their testimony is consistent with other evidence that you
16 believe.

17 Do not allow sympathy or prejudice to influence you.
18 The law demands of you a just verdict unaffected by anything
19 except the evidence, your common sense, and the law as I give
20 it to you. You should not take anything I may say or do
21 during the trial as indicating what I think of the evidence or
22 what I think your verdict should be.

23 No. 2: I have mentioned the word "evidence."
24 Evidence includes the testimony of witnesses, documents and
25 other things received as exhibits, any facts that have been

1 stipulated; that is, formally agreed to by the parties.

2 Certain things are not evidence. I shall list those
3 things for you now.

4 (1) Statements, arguments, questions and comments by
5 lawyers are not evidence.

6 (2) Objections are not evidence. Lawyers have a
7 right and a duty to object when they believe something is
8 improper. You should not be influenced by objections. If I
9 sustain an objection to a question, you must -- you must
10 ignore the question and must not try to guess what the answer
11 might have been.

12 (3) Testimony I strike from the record or tell you
13 to disregard is not evidence and must not be considered.

14 Anything you see or hear about this case outside the courtroom
15 is not evidence unless I specifically tell you otherwise
16 during the trial.

17 Furthermore, a particular item of evidence is
18 sometimes received for a limited purpose only. That is, it
19 can be used by you only for one particular purpose and not for
20 any other purpose. I shall tell you when that occurs and
21 instruct you on the purposes for which the item can and cannot
22 be used.

23 Finally, some of you may have heard the terms "direct
24 evidence" and "circumstantial evidence." You are instructed
25 that you should not be concerned with those terms since the

1 law makes no distinction between the weight to be given to
2 direct and circumstantial evidence.

3 No. 3: During the trial, it may be necessary for me
4 to talk with the attorneys out of your hearing either by
5 having a bench conference here while you are present in the
6 courtroom or by calling a recess. Please understand that
7 while you are waiting, we are working. The purpose of these
8 conferences is to decide how certain evidence is to be treated
9 under the Rules of Evidence and to avoid confusion and error.
10 We will, of course, do what we can to keep the number and
11 length of these conferences to a minimum.

12 No. 4: At the end of the trial you must make your
13 decision based on what you recall of the evidence. You will
14 not have a written transcript to consult and it may not be
15 practical for the court reporter to read back lengthy
16 testimony. You must pay close attention to the testimony as
17 it is -- as it is given. If you wish, however, you may take
18 notes to help you remember what witnesses said. If you do so,
19 please understand that you must keep them to yourself until
20 you and your fellow jurors go to the Jury Room to decide the
21 case. And do not let notetaking distract you so that you do
22 not hear other answers by the witness. When you leave at
23 night, your notes will be secured and no one will see them.
24 At the end of the trial they will be shredded.

25 No. 5: Finally, to ensure fairness, you, as jurors,

1 must obey the following rules. You must decide this case
2 solely on the evidence and your own observations, experiences,
3 reason, common sense, and the law in these and other
4 instructions. You must also keep to yourself any information
5 that you learn in court until it is time to discuss the case
6 with your fellow jurors during deliberations.

7 First, do not talk among yourselves about this case
8 or about anyone involved with it until you go to the Jury Room
9 to decide on your verdict. And let me add: Sometimes it's
10 common, based upon our experiences, to say, "Did you hear what
11 that person said," or something. That's all out of bounds.
12 You're not to talk to each other about anything in this case
13 until you deliberate.

14 Second, do not talk with anyone else about this case
15 or about anyone involved with it until the trial is over.

16 Third, when you are outside the courtroom, do not let
17 anyone tell you anything about this case, anyone involved with
18 it or any news story, rumor or gossip about it, or ask you
19 about your participation in it until the trial is over. If
20 someone should try to talk to you about this case during the
21 trial, please report it to me immediately.

22 I anticipate there will be news coverage of this case
23 from time to time. It's your obligation not to read any news
24 accounts of this case whatsoever. It's also the charge that
25 if you're in a room and something comes up on the television,

1 put your hands to your ears and leave the room. That
2 instruction means exactly what it says because you might hear
3 evidence that has nothing whatsoever to do with this case, and
4 -- and it would be inappropriate for you to consider anything
5 outside the courtroom.

6 Fourth, during the trial, you should not talk to any
7 of the parties, lawyers or witnesses, even to pass the time of
8 day. It is important that you do -- It is important that you
9 do justice and also maintain the appearance of doing justice.
10 If a person from one side of the case sees you talking to a
11 person from the other side, even to pass the time of day, a
12 suspicion about your fairness might arise. If any lawyer,
13 party or witness does not speak to you, it is because he or
14 she is not supposed to talk to you either.

15 Fifth, it may be necessary for you to tell your
16 family, friends, teachers, co-workers or employer about your
17 participation in this trial so that you can explain when you
18 are required to be in court and warn them not to talk to you
19 about the case, tell you anything they know or think they know
20 about the case, or discuss this case in your presence. You
21 must not communicate with anyone about the parties, witnesses,
22 participants, claims, evidence or anything else related to the
23 case or tell anyone anything about the jury's deliberations in
24 this case until after I accept your verdict or until I give
25 you specific permission to do so.

1 During the trial, while you are in the courthouse and
2 after you leave for the day, do not provide any information to
3 anyone by any means about this case. Thus, for example, do
4 not talk face to face or use any electronic device or media,
5 such as the telephone or cell phone or Smartphone, Blackberry,
6 PDA, computer, the Internet, any Internet service, any text or
7 Instant Messaging service, any Internet chat room, blog or
8 website, such as Facebook, MySpace, YouTube or Twitter, to
9 communicate to anyone any information about the case until
10 after I accept your verdict.

11 Several years ago we had a policy that cell phones
12 were confiscated when you came into the courthouse, and it
13 caused all kinds of problems. People claimed they did not
14 receive back -- receive their telephone, received someone
15 else's phone, it was damaged. So we changed the policy and
16 rely upon your good judgment and honesty and integrity in the
17 way you use those devices. What I just told you does not
18 prevent you from calling home, telling someone you're going to
19 be late. Anything like that is permissible, but you cannot
20 talk to anyone whatsoever about this case.

21 Does anyone have any question about that at all? I
22 just want to make sure that -- Okay, very well.

23 Do not do any research on the Internet or in
24 libraries, in the newspapers, or in any way or make any
25 investigation about this case on your own.

1 Do not visit or view any place discussed in this case
2 and do not use Internet maps or GoogleEarth or any other
3 program or device to search for or to view any place discussed
4 in the testimony. Also, do not research any information about
5 this case, the law, the people involved, including the
6 parties, the witnesses, the lawyers or the Judge.

7 7: Do not read news stories or articles in print, on
8 the Internet or any blog about the case or about anyone
9 involved with it or listen to any radio or television reports
10 about it or about anyone involved with it or let anyone tell
11 you anything about the case in any way. If you want, you can
12 have your spouse or friend clip any stories and set them aside
13 to give you after the trial is over. I assure you that you
14 will have heard -- when you've heard all the evidence, you
15 will know more about this case than anyone will learn through
16 the news media or any other source, and it will be more
17 accurate.

18 8: Do not make up your mind during the trial about
19 what the verdict should be. Keep an open mind until you have
20 heard -- until you've had a chance to discuss the evidence
21 during deliberations.

22 9: If at any time during the trial you have a
23 problem that you want to bring to my attention or you feel ill
24 or need to go to the restroom, please send a note to the Court
25 Security Officer, to the Court Clerk who will give them to me.

1 I want you to be comfortable, so please do not hesitate to
2 tell me about any problem.

3 Now during -- Your comfort is utmost. So it doesn't
4 matter when it is. If someone needs a recess, you know, try
5 to get my attention or someone here, and we will address it.
6 Do not be uncomfortable.

7 Generally, we will be taking a recess -- today may be
8 a little bit different, but usually we start promptly at 8:30,
9 and then about 10:15 or 10:30, in that range, we'll take a
10 recess; about 15, 20 minutes. And in the afternoon we'll take
11 a recess a little after 2:00, 2:15, 2:30 and then a stand-up
12 ten-minute break at 4:00, and then we will conclude the case
13 at 5:00 unless there's a witness on the stand that needs to
14 catch an airplane or something of that nature or cannot be
15 here the next day at which time we might go a little later
16 than that. There will be days when we will finish earlier
17 than that.

18 So that concludes my opening -- No. I have one more;
19 sorry.

20 The trial will proceed in the following manner.
21 First, the Plaintiffs' attorney may make an opening statement.
22 Next, the Defendants' attorney may make an opening statement.
23 An opening statement is not evidence but is simply a summary
24 of what the attorney expects the evidence to be.

25 The Plaintiff will then present evidence and counsel

1 for Defendant may cross-examine. Following the Plaintiffs'
2 case, the Defendant may present evidence and Plaintiffs'
3 counsel may cross-examine.

4 After presentation of evidence is completed, the
5 Court will instruct you further on the law. The attorneys
6 will make their closing arguments to summarize and interpret
7 the evidence for you. As with opening statements, closing
8 arguments are not evidence. After that, you will retire to
9 deliberate on your verdict.

10 Because opening statements are not evidence, you will
11 not get your notebooks until after the opening statements.

12 Plaintiff ready?

13 MR. REILLY: Plaintiffs are ready, Your Honor.

14 THE COURT: All right. You may proceed.

15 MR. REILLY: Thank you, Your Honor.

16 Counsel, colleagues and clients, may it please the
17 Court, --

18 THE COURT: Yes, Mr. Reilly.

19 MR. REILLY: -- Members of the Jury. I'm Dan Reilly,
20 and I represent Jo Ann Howard, Chuck Renn and a number of
21 other folks that I'll introduce here in a minute.

22 We're honored to be here. We started working on this
23 case almost six years ago. We have people on our team and
24 clients who have devoted most of their time and much of their
25 lives to this moment so that we could have a jury hear the

1 claims that are being brought, and you are that jury.

2 Everything that we do between now and the end of this
3 trial will be to convince you that our claims are proper.
4 Every witness that we call on the stand -- And that's where
5 the evidence is going to come through. The witness will sit
6 right there. You'll be close to them. You'll be able to see
7 them. You'll be able to hear them.

8 We'll have the exhibits shown on this screen. You'll
9 be able to see the papers, and you'll be able to hear the
10 evidence through the witnesses we present.

11 Every question we ask is intended to convince you
12 that my clients in this room are correct that this bank didn't
13 do its job.

14 THE COURT: Mr. Reilly, could you pull that
15 microphone over --

16 MR. REILLY: Yes. I'm sorry, Your Honor.

17 THE COURT: -- in front of where you are? Thank you.
18 That's good. Thank you, sir.

19 MR. REILLY: My apologies.

20 THE COURT: No; that's all right. The court reporter
21 was struggling a little. Go ahead.

22 MR. REILLY: You don't want me to start over, do you?

23 THE COURT: No, no; no.

24 MR. REILLY: When a party files a lawsuit, they get
25 certain power. They get the right to serve a subpoena on

1 witnesses. They get the right to ask questions in writing to
2 the other side. They get the right to demand internal
3 documents from the other side, and we have been very
4 aggressive in doing that.

5 And we now have the internal documents of what went
6 on inside this bank in the six years that Allegiant Bank
7 served as the trustee over the consumer funds of thousands of
8 families here in Missouri. And we now have the testimony when
9 we called people in to take what's called a "deposition." You
10 have heard that term. You'll hear it again here. Almost
11 every witness that we call to the stand we've already had
12 under oath with the documents; able to ask them the questions
13 we want answered, and we've gotten those questions answered.
14 And now for you, we're going to bring those people in here and
15 put them on the witness stand.

16 You don't have to listen to my words about whether
17 this bank failed in its duties. Those words will come out of
18 the mouths of their witnesses. You don't have to listen to my
19 words about what the paper is going to say, what the internal
20 documents are going to show because it's their paper that we
21 now have, and it's their paper that we're going to show you.
22 The evidence will show in this case that we will prove our
23 case using their people and their paper.

24 Some witnesses, if you're out of state, can't be
25 subpoenaed here for trial, but we videotaped that testimony of

1 people who are out of state. We got their internal documents,
2 after we knew they played a role in what went on behind the
3 scenes at Allegiant Bank in the six years that they were
4 supposed to be protecting consumers' money so that it was
5 still there when the funerals were needed. And we will show
6 you -- For those witnesses that we can't bring here to court,
7 we will show you videotape of the testimony that we took. And
8 the Court will instruct you: You treat that just as if
9 they're sitting in that witness box. They're under oath;
10 they're the admissions that they made.

11 Many of those are questions being asked by my
12 partner, Larry Pozner. You will hear his voice. He's got a
13 good voice.

14 And through those depositions and this witness chair,
15 we'll lay out for you the case. My job now is to try and tell
16 you what's coming. I want to make sure that when I sit down,
17 you have an understanding of our case and our response to
18 their case. But as you can imagine, working on it for six
19 years, I have a lot to say. And I promise you that I've
20 dropped a lot of things that I want to say so that I can keep
21 this clear. But if it's not clear at any point, feel comfort
22 that when we put the witnesses on and ask them the questions
23 and we present the evidence to you, that we'll make it clear.

24 I can't tell you everything that's going to happen.
25 I can't describe every question that's going to be asked. I

1 can't talk about every document that's going to be offered. I
2 can't talk about everything that the Defendants might say, but
3 I can summarize for you what we've learned.

4 You're going to sit here in judgment on what a bank
5 trust department did. I've never been a bank trust department
6 officer. You've never been a bank trust department officer,
7 but we're going to help you understand what their legal
8 obligations are under Missouri law which has a law that talks
9 about preneed funeral contracts. It lays out how it's
10 supposed to work. It lays out what -- the duties of a trustee
11 holding consumer money for people who have paid for a preneed
12 funeral contract.

13 But more importantly, when you're having to make that
14 decision about whether they did their job, we have people from
15 their side admitting that what they did was disturbing. Not
16 my words; their words.

17 There really are three banks represented at this
18 table here. They're all one now because Allegiant merged into
19 a bank called "National City Bank" which merged into a bank
20 called "PNC." And PNC is responsible under the law for
21 whatever Allegiant did. That's undisputed. In America, if a
22 bank takes over a bank, you can't say, "Well, we don't want
23 the problems that existed in that bank." And so PNC is the
24 Defendant in this case, liable for what went on between 1998
25 and 2008.

1 I represent Jo Ann Howard who is the Special Deputy
2 Receiver for the Texas Department of Insurance. She was
3 appointed by the Commissioner of the Texas Department of
4 Insurance to oversee the liquidation of three companies. One
5 of those companies is called "National Prearranged Services",
6 "NPS", and that was a St. Louis company, headquartered in
7 Clayton, and it's the company that sold thousands of preneed
8 contracts in 19 different states. And it went belly-up seven
9 years ago.

10 As the Special Deputy Receiver, Jo Ann's job is to go
11 in and look at these companies, take them over, look at the
12 computer bases, look at the databases, lock them down. It's a
13 takeover team. They come in; they shut everything down. They
14 tell people, "Get your hands off the computers." They change
15 the passwords because something was going wrong. They have to
16 find out who they can trust and who they can't trust.

17 But the companies still have to keep running because
18 when these companies were taken over in 2008, there were more
19 than 150,000 families who had signed contracts for their loved
20 ones to have a funeral paid for in multiple different states.
21 150,000 families.

22 I was thinking about it. If you took the Cardinal
23 stadium and filled it, if you took the Blues stadium and
24 filled in, if you took the RAMS Stadium and filled it, you
25 still have more people. You have 20,000 people in the parking

1 lot.

2 And every one of those contracts represents a family
3 who put money in to NPS. And in 2008 when the Special Deputy
4 Receiver went in to those companies, there wasn't any money
5 there. At that point the amount that was owed to those
6 families was 500 million dollars, roughly. It's hard to
7 figure out exactly until you get in and see the contracts.
8 That's a half a billion dollars.

9 One of the jobs of the Special Deputy Receiver then
10 is to start figuring out if there's a way to pay claims
11 because a claim happens when one of those next of kin, whether
12 it's here in Missouri or it's in Illinois or it's in Texas,
13 Ohio, Arkansas, California, when one of those folks dies,
14 there's a claim. This was a gigantic mess in 2008.

15 The second job of the Special Deputy Receiver is to
16 start processing claims as a family member dies. And you can
17 imagine folks who have put money in and believe that their
18 funeral of their mom or their brother or their father is taken
19 care of, and they find out the money's gone, and they don't
20 know who to talk to. They call a funeral home because a lot
21 of these policies -- I'm sorry -- these contracts were bought
22 through funeral homes all over the country.

23 Colin, can you show Slide 52?

24 Funeral homes are part of this process in many ways.
25 Some people bought on their own from NPS. Some people bought

1 through a funeral home in their hometown. And in 2008 we'll
2 see that there were funeral homes -- Sorry. Is that 52? I'll
3 get it here in just a second. That's my fault; 50.

4 This is Colin Pitet. He has the job of running the
5 computer system; anticipating my mistakes; covering them, if
6 he can.

7 Each red dot is a funeral home. It's a building.
8 It's a place where people in that town go when their loved
9 ones die. It's a place that should be getting money because
10 they promised to pay for funerals in the future. And we will
11 have funeral home directors out of Missouri here come in and
12 tell you how they ended up in this process.

13 Thanks. You can shut that down.

14 Another job of the Special Deputy Receiver is to try
15 and find a way to get these claims paid. The contracts in
16 many states were supposed to be backed by a life insurance
17 policy, but that life insurance policy was owned by this
18 trust, by the Allegiant Trust Bank. They were supposed to be
19 the owners of the policies, but it turned out that that
20 company was part of a scam because it was owned by the same
21 people that owned NPS. It was run by the same people that
22 owned NPS called "Lincoln Memorial Life."

23 And there was another life insurance company in Texas
24 called "Memorial," and that was owned by the same people that
25 owned NPS, the Cassitys. The Cassitys are a St. Louis family,

1 but they're a St. Louis family with a father in federal prison
2 for the second time and a son in federal prison because of
3 this conduct.

4 When a life insurance company goes under in any
5 state, there's a system set up so the consumers get protected
6 so that consumers are not without their life insurance
7 benefits. And that system is called the "State Guaranty
8 Association," and every single state has one of those. So
9 that if a life insurance company goes under, the State
10 Guaranty Associations step in and they pay the claims.

11 Chuck Renn, Jefferson City, Executive Director of the
12 Missouri Guaranty Association.

13 Those 150,000 families around the country who's had
14 people die between 2008 and today are getting their claims
15 paid because of the Missouri Guaranty Association for those
16 folks in Missouri. And 28 other Guaranty Associations are
17 paying those claims, and they pay more than 200 million
18 dollars. Every time a family member passes away in Missouri,
19 the Missouri Guaranty Association takes care of it.

20 Every time a family member passes away in Texas,
21 Bart Boles, would you please stand?

22 Bart Boles is the Executive Director of the Texas
23 Life and Health Guaranty Association, and his Guaranty
24 Association makes sure they get paid.

25 Every time a family member dies in Oklahoma -- Tad?

1 Tad Rhodes, the Executive Director of the Oklahoma
2 Life Guaranty Association makes sure that family gets paid.

3 Every time a family member or next of kin dies in
4 Kansas, Linda Becker, Executive Director of Kansas Life
5 Insurance Guaranty Association makes sure they get paid.

6 Is Janis here?

7 Every time a family member dies in Illinois,
8 Janis Potter, Executive Director of the Illinois Guaranty
9 Association makes sure they get paid.

10 In Iowa -- Tom?

11 Every time a family member dies in Iowa,
12 Tom Sullivan, Executive Director of the Guaranty Association
13 of Iowa makes sure it gets paid.

14 There are 28 other states where that goes on, and the
15 Guaranty Associations of those states are represented here
16 today by Bill O'Sullivan. Bill's the Senior Vice-President
17 and General Counsel of the National Organization of Guaranty
18 Associations.

19 And, Bill, do you mind standing?

20 And Paul Peterson. Paul's the Vice-President of
21 Accounting and Finance for the National Association, and
22 they're overseeing the payment of claims on the following
23 states if somebody dies in those states: Arizona, California,
24 Colorado, District of Columbia, Georgia, Ohio, Iowa, Idaho,
25 Indiana, Louisiana, Maryland, Michigan, Minnesota,

1 Mississippi, Montana, Nebraska, Nevada, New Mexico
2 North Dakota, Ohio, Oregon, Rhode Island, South Dakota,
3 Tennessee, Utah, Washington, West Virginia, Wisconsin and
4 Wyoming.

5 Bill, Paul, thank you.

6 My clients today also involve Chris Fuller. Chris
7 represents -- is counsel to the Special Deputy Receiver,
8 Jo Ann Howard's lawyer.

9 Marisol Saenz, Marisol is a staff attorney with the
10 Texas Department of Insurance and an attorney to the
11 Commissioner of Insurance in this role as a receiver for
12 National Prearranged Services, Lincoln Memorial and Memorial
13 Service Life Insurance Company.

14 Thanks, Marisol.

15 I think I've gotten everyone.

16 It was a huge mess in 2008. The computer system was
17 gigantic. The data was enormous. The number of contracts was
18 gigantic, but the Special Deputy Receiver went in and grabbed
19 it all.

20 Another job of the Special Deputy Receiver is to try
21 and figure out what caused this mess, to investigate, because
22 Jo Ann's job is to collect as much money into that estate,
23 that liquidation estate. And that's what happens; these three
24 companies become an estate. And she has to look and say:
25 What do they owe? And we talked about what they owe. Well,

1 what do they have? We talked about what they had; nothing.

2 Can I collect anything from anyone?

3 And jointly, Jo Ann Howard and the Guaranty
4 Associations created a plan about how these claims could be
5 paid, but they also hired lawyers to figure out if someone was
6 responsible for this because when Jo Ann Howard is appointed
7 as the Special Deputy Receiver in Texas, she has a right to
8 file lawsuits against those companies that caused the problem,
9 those companies that breached their duties that resulted in
10 these losses.

11 And when the Guaranty Associations pay these claims,
12 they have a right to step into the shoes of whoever had those
13 losses. There's no free lunch here. The Special Deputy
14 Receiver didn't have any money and didn't cause these claims.
15 The Guaranty Associations had to collect money to pay these
16 claims. They didn't cause these claims. They're doing their
17 job. The Guaranty Associations are doing their job. This
18 case is about the bank that didn't do its job.

19 Our focus in this case is about Allegiant Bank and
20 the six years that they were supposed to protect this money.
21 And in that timeframe, it's going to be undisputed that they
22 had duties under Missouri law because they agreed to be a
23 trustee. They agreed to let their Bank Trust Department be
24 the place where Missouri consumer funds were going to be put;
25 to be the accounts where the funds were supposed to be kept

1 safely so that when the funerals happened in the future, the
2 money was still there. And for six years, this bank allowed a
3 massive multi-state consumer fraud scheme run right through
4 their Trust Department.

5 And when you have to decide whether they breached
6 their duties by doing that, you don't have to listen to me.
7 You don't have to -- You do have to listen to me, but you
8 don't have to be convinced by me because we're going to put
9 evidence on by the bank that took them over, National City
10 Bank, who came in when they were taking them over and looked
11 at what that Allegiant Bank Trust Department had been doing
12 for six years and said, "This is disturbing."

13 Another bank has already done that evaluation. This
14 case is about the liability of Allegiant Bank. And when
15 National City Bank was taking it over, they were looking into
16 and evaluating the liability of Allegiant to see if it did its
17 job while it was supposed to be protecting this money.

18 There is only one company, Allegiant Bank and Trust
19 Company, that had the responsibility to protect that money as
20 a trustee in those years. There's only one company that had
21 to do what we call "CPR;" not the standard CPR you know.
22 Their responsibility was to control the money in the trusts.
23 Their responsibility was to protect the money in the trusts.
24 Their responsibility was to record the activities in the
25 trusts. Control, protect, record. They were supposed to know

1 what was the money coming in and what the money was that was
2 coming out. And the system was set up so that anybody who
3 might want to try and steal the money or keep the money
4 couldn't get it. The trustee was supposed to be protecting
5 that money, controlling that money, keeping records.

6 This Trust Department isn't like someone -- If -- If
7 I ask my brother to keep an eye on money for our mom, he's not
8 a professional trustee. We talked in jury selection the other
9 day. Some folks have been a trustee, but they weren't paid
10 for it. They were just asked to do it. This is a
11 professional Trust Department. They were paid to do this.
12 They held themselves out as expert -- experts in doing it.
13 They're supposed to know how to do it.

14 How they did it wasn't a mistake. It was a choice.
15 They made a decision that they were not going to keep control
16 of the money; that they were not going to protect the money,
17 and they were not going to keep records. And the people that
18 they gave the control of money to and the people who they let
19 protect the money and the people who they let keep the records
20 were crooks. They let them steal the money. They never
21 looked at the requests by those folks to take money out of the
22 bank.

23 One -- More than a -- More than a thousand times,
24 more than a thousand times in that six years the people stole
25 the money; sent a wire transfer to this bank; said, "Give us

1 the money; we need some money out of the trusts." Sometimes
2 it was a thousand dollars. Sometimes it was a hundred
3 thousand dollars. Sometimes it was five hundred thousand
4 dollars. Sometimes it was a million dollars. Sometimes it
5 was more than a million dollars. And this Trust Department,
6 more than a thousand times, instead of saying, "What do you
7 need this money for, where are you sending this money, who's
8 getting this money," never asked those questions; never knew
9 where the money was going. And more than a thousand times, in
10 fact, it's every single time while they were the trustee, when
11 those crooks asked for the money, they gave it to them.

12 I'll show you the list of the thousand plus requests
13 for money out of this trust and the thousand times this Bank
14 Trust Department said, "Sure," and the thousand times they
15 will admit, "We never asked what it was for; we never asked
16 who it was going to."

17 Before they sent a dollar out of these trusts, they
18 had a responsibility under the law. They had a responsibility
19 under the trust agreement because when they agreed to be a
20 trustee, they signed a contract, and that contract says
21 they're going to follow the law. They're going to follow
22 Chapter 436. You'll see that number here. It's in here but
23 it's small.

24 You'll hear about Chapter 436. That's the Missouri
25 law. And the contract they signed when they said, "We'll be

1 the trustee; we agree we'll maintain control of the money; we
2 agree we'll protect the money; we agree we'll keep records; we
3 agree we'll follow the law," and we'll see that contract.

4 So they got responsibilities under the law, under the
5 contract, and then there's a third area they have
6 responsibilities under which is just the industry practice.

7 They're in the business of trust industry practice. We will
8 bring experts in who say there are certain do's and don'ts.
9 There are ABCs. It's like anything else out there. There's a
10 certain way to build a car. There's a certain way you're
11 going to shoot a gun. There's a certain way that you take
12 care of somebody who's elderly and needs help. There's a
13 certain way you process things. There are checklists of those
14 things, and everybody understands them, the ABCs of being a
15 trustee. And there are schools, national schools, two or
16 three of them that our experts -- one of our experts teaches
17 at that bank -- young bank officers, senior bank trust
18 officers go to those schools; one up at Northwestern
19 University. And they're trained. They're trained in CPR.
20 They're trained in how to control money in the trusts.
21 They're trained on how to protect money in the trusts.
22 They're trained in how to keep records.

23 Allegiant Bank Trust Department knew how to do this,
24 but they didn't. We don't have to prove that they are the
25 worst Trust Department ever. We only have to prove they

1 didn't do their job, and that's what we're going to prove.

2 When you get to the end of this case, the Judge will
3 give you or read to you a set of instructions, and that's the
4 law and that's Judge Webber's job, and he'll tell you what the
5 law is. I won't tell you what the law is, but I will tell you
6 what I think Judge Webber will say.

7 And then you'll get a verdict form. And when you go
8 in there, whoever you pick as your foreperson, you'll start
9 deliberating. And you'll take the law and the facts that came
10 through this witness stand and the exhibits that you saw on
11 this screen, and you'll put them together to make a decision.

12 And the first decision you make is three questions
13 you have to ask. Did this bank do its job? If it didn't, did
14 it cause losses? And if it did cause losses, what's the
15 amount of the losses?

16 Those are the three questions you'll have in front of
17 you. And the lawyers call that: Did they breach their duty?
18 Was their breach a cause of damages? What's the amount of
19 damages?

20 Our claim in this case are two claims; one, that they
21 were negligent. They failed to use ordinary care, the kind of
22 care that you would expect someone to use if they were looking
23 out for someone else's money. You decide that.

24 I suspect that when you walked out of here the other
25 day and realized you were going to be on this jury and when

1 you took the oath this morning, you felt the power and the
2 authority that you have, and you have it.

3 One claim is that they failed to use ordinary care.

4 The second claim is they breached their fiduciary
5 duty, and the Court will tell you what a "fiduciary" is.
6 That's a term some people have heard; some know, some don't;
7 but a fiduciary is a position of trust. I have a fiduciary
8 duty to my clients. They -- They have to trust me. I have to
9 do what's best for them. I can't put my interests before
10 them. Their interests come first. I'm up here now doing what
11 my clients have paid me to do. And our claim is that we're
12 here now because Allegiant didn't do what it was paid to do.

13 That fiduciary duty is a special duty. It's the
14 highest duty in law. It's a duty where they have a duty of
15 loyalty to their beneficiaries. You've heard that term. And
16 the beneficiaries in this case were the consumers in Missouri,
17 the funeral homes in Missouri, and NPS, the company selling
18 the preneed contracts. They had to put their interests behind
19 theirs.

20 Our claim is they didn't do their job because they
21 didn't do CPR. And I'm going to give you more details about
22 that as we walk through the five years that they served as
23 trustee. It's more than five years. It's almost six years,
24 but there's five full years, 1999, 2000, 2001, 2002, 2003,
25 those full five years they served as trustee. And I'll show

1 you -- I'm not going to go through every thousand times that
2 there was a request, but I'll give you some highlights to give
3 you a sense of what that paperwork flow was, what they could
4 have done.

5 This bank was the only bank with the opportunity in
6 that timeframe to say "no" to this scheme. All they had to do
7 was control the assets, and the crooks would have been
8 stopped. All they had to do was protect the assets, and the
9 crooks would have been stopped. All they had to do was keep
10 records, and the crooks would have been stopped. One of the
11 records they're supposed to keep is before they send money out
12 of the trusts, they're supposed to do a calculation to see:
13 Do we have enough money in the trusts now to pay the future
14 funerals? And I'm not a bookkeeper, but I can see that's
15 complicated. How many funerals do we have? Fifty thousand
16 people are expecting funerals? How much have they paid for?

17 Because when the consumers buy funerals or preneed
18 funerals, they make a decision. How much can I afford? And
19 they get a menu: What type of funeral do you want? What
20 services, burial, do you want? Some of you probably have done
21 this if you've had a loved one pass away. You're doing it at
22 a very difficult time. But you can pay back in these days
23 maybe \$3000 up to 10 or 15,000 dollars. You can pay way more
24 than that, but none of these were that big. And they make
25 that decision. So the Trust Department is supposed to know

1 for each individual how much did they -- do we -- are we going
2 to owe them and how much did we pay?

3 They didn't have any records in their Trust
4 Department for the individual consumers to know how much they
5 had paid or know how much they were owed. And when we put
6 their trust officer on the stand, the one who's responsible,
7 the only trust officer responsible throughout this entire
8 six-year period, he'll say, "You know what? We didn't have to
9 worry about the individual consumers. We didn't treat them
10 like they were our beneficiaries. We didn't need to know how
11 much they paid in or how much they paid out." And that turns
12 out from the evidence in this case to be wrong.

13 We'll present evidence that shows that they were
14 required, under industry practice as a trustee, to know for
15 each individual consumer how much money went in, how much
16 money was going to be due, so if that person called up and
17 canceled their policy, they'd know how much to give them back.

18 Or if that person called up and said, "My mom just
19 died; how much is my contract -- is her contract for? Because
20 I wasn't there when she bought it." They don't have any
21 records like that -- they're the trustee -- because they gave
22 all of those recordkeeping rights to the crooks.

23 The second question is -- So this is duty and breach.
24 What other duties did they breach?

25 The next one is causation. Did their breach cause an

1 injury?

2 Because this bank didn't do its job, there were
3 losses. The Cassitys' Ponzi scheme, I'll talk about the
4 Cassitys in a minute when we go over the board and walk
5 through the scheme. The Cassity Ponzi scheme was allowed to
6 continue and expand into many other states.

7 Can we get the expansion slide, Michael?

8 Michael Robertson, why don't you stand up for a second.

9 Michael Robertson is an associate with our law firm.
10 He has devoted his entire life to this for the last five
11 years. And you will see at times that when I can't remember a
12 fact, I can't remember something, I'm 61 years old. All
13 right? I'm just happy I remembered to be here on time, but
14 Michael is a computer database for us. He doesn't look like a
15 computer, but he has engrossed himself in this.

16 So what we'll see here is that money -- Is this the
17 state expansion?

18 Your Honor, can I move around here for just a second
19 and see if that's ---

20 THE COURT: Yes.

21 MR. REILLY: Okay. So this started in three states
22 in 1998. While they were the trustee, this Ponzi scheme --
23 And this is our symbol for the Ponzi scheme. You'll get to
24 see that close-up in a minute. I'll show you what it is.

25 It expanded to Illinois. I'm not going to guess all

1 these states. It kept going; it kept going. It's like fifth
2 grade geography now, but that's Nevada. I know that's
3 California. All right, Ohio, Florida.

4 They expanded in those states while they were the
5 trustee. And what -- And what "expanded in those states"
6 means this: It means that another family bought a contract
7 and another family was owed money. And what we're going to
8 see is that that Ponzi scheme was such that the minute that
9 family put the money into the trust, instead -- into Missouri,
10 instead of staying in the trusts, it went out of the trusts.
11 And as a result, that individual's money was gone. It was
12 used to pay someone else's funeral.

13 That's what's -- That's what a Ponzi scheme is. A
14 Ponzi scheme is when you promise people money in the future.
15 You take their money when you get it. And when you have to
16 pay them, you need new money coming in to give them the money.
17 And that's how this scheme worked, and I'll show you that in a
18 little more detail, too. Consumer money comes in. Somebody
19 else dies. They take their money and give it to them. That
20 person's money is gone. And the only way it can work is that
21 they got to keep getting more money in the door; more money in
22 the door. And that's why they have to expand because they
23 can't -- They can only get so much money out of Missouri.

24 That Ponzi scheme was run through the Allegiant Bank
25 Trust Department for more than five years. And if they had

1 done their job, this scheme would have not been allowed to
2 expand or continue.

3 Because the bank didn't do its job, thousands of
4 families were victimized. A hundred and fifty thousand plus
5 families in 2008 had signed NPS contracts, and there was no
6 money because the Ponzi scheme run by the Cassity family had
7 drained it through the Allegiant Bank Trust Department.

8 Millions of consumer dollars were drained out of the
9 trusts for improper purposes. And we'll -- we'll put on the
10 witness stand a witness named "Travis Ardrey," and he has
11 spent the last five years going through the paperwork, and
12 he'll show how the money came into St. Louis or into the
13 Clayton office and out to pay other people's funerals, to pay
14 other people's claims, to pay insurance premiums on contracts
15 -- on insurance policies that were backing some of these
16 contracts in other states. The Cassitys who were running this
17 scheme were keeping the records, and that let them keep the
18 money.

19 The third question that you'll have to answer is: If
20 you find that the bank didn't do its job and if you find
21 because the bank didn't do its job there were losses, you have
22 to decide the amount of the losses. That question for you is
23 for you to decide what's fair and what's reasonable under the
24 circumstances. But when you answer that question, you're not
25 going to have to guess how much money's gone. You're not

1 going to have to guess what the dollar amount is. We're not
2 going to just dump on you a big pile of claim forms and say,
3 you know, "See if you can total them up." It's not fair to
4 you. Because the Special Deputy Receiver had access to all of
5 those documents, all the contracts, because the claims are
6 being processed by the Guaranty Associations, by Paul Peterson
7 and his crew over the last five years, and because all the
8 claims that are going to be processed in the future are going
9 to get paid, every person of those 150,000 who has a funeral
10 due under NPS with a contract insurance policy behind it is
11 going to get their funeral paid until the last person passes
12 away.

13 And so we've calculated the dollars that are lost.
14 We calculated what the Special Deputy Receiver's losses are.
15 And, in fact, the Special Deputy Receiver technically owes
16 money to the Guaranty Associations because they're the ones
17 who are paying these claims, and they have a claim against the
18 Special Deputy Receiver. It's friendly, you know. They
19 understand each other. They're working together. That's how
20 the system works, but they're not supposed to clean up the
21 mess for nothing. Somebody else made the mess. They can
22 pursue them, and that's why we're here.

23 And we've calculated the losses caused by Allegiant.
24 Each new contract that was written and still active from
25 Allegiant's Day One, from the first day they said, "Yes, we

1 will be the trustee for the Cassitys' companies," that's
2 August of 1998, that first contract, all the way until the
3 Ponzi scheme crashed in 2008. And that number is 363 million
4 dollars. And there isn't any dispute that that number is a
5 loss. And you have to decide: Is it because they didn't do
6 their job that those losses were caused?

7 Let's talk about the Defendants for a minute here.

8 On the bottom left here you'll see the symbol for Allegiant
9 Bank. I'll give you a bigger picture of them as we walk
10 through the process. They were the trustee from 1998 to 2004.
11 And right at the end of their trustee era, National City Bank,
12 NCB, headquartered out of Cleveland came in and took them
13 over. And they signed what's called a "Merger Agreement"
14 because National City was going to merge -- I'm sorry --
15 Allegiant Bank was going to merge into National City.

16 These sizes are just approximates, but National City
17 was much larger and, frankly, much more sophisticated than
18 Allegiant. Allegiant's Trust Department was small and new.
19 And when it said "yes" to being these preneed trustee -- be
20 the preneed trustee, they had no experience ever doing preneed
21 trusts before. Nobody in their department had ever done them
22 before.

23 National City Bank, when they signed a Merger
24 Agreement, and these are -- you know, these are complicated
25 legal agreements, they announce in December of 2003 -- sign a

1 big thick legal document with all kinds of attachments -- "We
2 are going to merge these two banks."

3 And like when you buy a house, there's going to be a
4 closing. So the closing happens six months or so afterwards.
5 Right around Christmas of 2003, May-ish or so of 2004 it
6 finally closes. In that six months National City Bank has
7 every department that they are going to absorb go to St. Louis
8 and see what the department they're absorbing has been doing.
9 So there's a Trust Department in National City, and they fly
10 down to St. Louis to meet with the people at Allegiant because
11 they're supposed to take that business over.

12 The Allegiant Bank Trust Department, when they were
13 going to be taken over by National City Bank, only had one big
14 customer: NPS. They had only had one big account; the
15 preneed funeral accounts. Ninety percent of their business
16 was in those accounts.

17 And National City Bank knew something about preneed
18 contracts. National City Bank had had preneed contracts
19 before. So they knew the questions that should have been
20 asked by Allegiant on Day One when they took these accounts
21 over, and they started asking questions. National City Bank
22 is a Defendant in this case. Again, in their role as the
23 successors, as the company that took over Allegiant, when they
24 took them over, they had to take on the liabilities. If
25 Allegiant's liable in this case, National City Bank is liable.

1 What you see here is that National City Bank -- see
2 what we wrote right next to it -- they quickly saw many red
3 flags in the Allegiant trusteeship. In one lunch, a man named
4 Albert Kantra, K-A-N-T-R-A, came down to St. Louis and met
5 with the trust people at Allegiant, and he immediately
6 realized that the potential liability, and it's actually a
7 potential fiduciary liability of Allegiant, was huge. Not my
8 words; his words.

9 Let's look at his memo. And Mr. Kantra, we'll show
10 his video. As soon as defense counsel are finished with their
11 opening statement, we're going to put him on through
12 videotape.

13 This is a memo he wrote December 21st, 2003, from
14 Al Kantra to Tim Lathe. That's his boss in Cleveland. He's
15 talking about the Allegiant integration visit notes and
16 current issues. He's just been in St. Louis to meet with a
17 fellow named "Herb Morisse," M-O-R-I-S-S-E. You will hear
18 that name a lot. He was the Allegiant Trust Department person
19 responsible for these trusts.

20 "The largest trust account is a 195 million dollar
21 preneed funeral arrangement trust that generates only about
22 \$60,000 in annual fees. They are losing big money on this
23 account, and the potential fiduciary liability is huge. In
24 years past, we have had large losses related to these types of
25 accounts in Michigan and other states. We will likely look to

1 exit this relationship."

2 The future -- The potential fiduciary liability he's
3 talking about is the liability in this case. You bet it's
4 huge. It's huge because this bank let it get huge.

5 And when we got this document, we went and served a
6 subpoena on Mr. Kantra; went to Cleveland where he was. You
7 can subpoena somebody to appear in their home state through
8 the federal court system. You can't drag them to another
9 state, but we were going to go to Cleveland after we saw this
10 document. This is exactly what our case was about. We wanted
11 to hear Mr. Kantra admit that this is what he wrote.

12 And after the defense counsel have done their opening
13 statement, we'll call our first witness. And this is unusual
14 for Mr. Pozner and me. We've tried a lot of cases together
15 over the years. We normally put a live witness on the stand,
16 but we're going to show you video right out of the box. But
17 we're showing you what we think is most important right out of
18 the box, and Mr. Kantra will be the first video that you'll
19 see maybe this afternoon.

20 Mr. Kantra made internal notes on an Excel
21 spreadsheet that we also got. And along the top here he's
22 indicated various tasks, and this particular task is the one
23 regarding the Allegiant accounts. The description of his task
24 is that he "must decide whether or not to retain preneed
25 funeral trusts totaling 195 million dollars in assets and

1 generating 58,000 in annual fees."

2 Mr. Kantra saw the problems with these trusts the way
3 Allegiant was handling them after one day in St. Louis. They
4 will say they didn't see it for six years. That was a choice.

5 Mr. Kantra then indicated what the priority was of
6 this task; meaning, "What are we going to do? Are we going to
7 take these accounts on or are we going to get rid of them?"
8 And what the risk assessment was. The priority was "urgent"
9 and the risk assessment was "extremely high." Not our words;
10 the words of a Defendant Bank.

11 He then discussed what information they obtained and
12 the action and steps they were going to do. "Most information
13 to date indicates we should exit this business as soon as
14 possible. Exit language in documents to be reviewed by
15 Davidson and Sackley."

16 Davidson and Sackley are what are called "Fiduciary
17 Risk Officers" in National City Bank; Fiduciary Risk Officers,
18 evaluating the risks.

19 When they say, "We should exit this business as soon
20 as possible," the evidence is going to show what that means
21 is: The thousands of Missouri families who have signed
22 contracts to get their future funerals paid for themselves or
23 their next of kin, who put money into these trust accounts who
24 this Trust Department, Allegiant, was supposed to be watching,
25 are going to get shipped somewhere else to another bank. It's

1 not National City Bank they're talking about, right?

2 They're saying, "We need to get somebody else to take
3 these trusts over because we don't want them because the
4 future fiduciary liability is huge."

5 I'm going to walk through this process a little bit,
6 but let me tell you that at the end of this process, National
7 City Bank didn't take these trusts. They got rid of them to
8 another bank in St. Louis. And when they got rid of them,
9 Allegiant Bank didn't tell that bank about the problems. And
10 when they got rid of them, the people whose money was supposed
11 to be in those trust accounts were never told their money was
12 moved to another bank; were never told there was a new trustee
13 different than the one whose name was on their contract when
14 they signed up. The only people that knew that the trusts had
15 been moved were the Allegiant Bank Trust Department and the
16 National City Bank Trust Department and the new bank called
17 "Bremen Bank" here in St. Louis that took the trusts on.

18 And when they took the trusts on, Allegiant met with
19 them and told them how to run the trusts, and they ran the
20 trusts just like Allegiant did. They didn't know there were
21 problems. They didn't do CPR either. And the number of
22 people signing up kept growing and growing and growing, and
23 the Ponzi scheme kept going and going and going, and the
24 losses kept building and building and building.

25 The people in Cleveland, that's -- that's National

1 City Bank people, Al Kantra, they sent an e-mail to St. Louis
2 and said, "You know what? We're not taking these trusts on.
3 You guys need to find another bank to do it."

4 And we've got that e-mail now. Let's show that.

5 This is an e-mail from Mr. Kantra on January 15th,
6 2004. Before Christmas, he was in St. Louis. It's after the
7 new year now. He's sending an e-mail to Art Weiss. Art Weiss
8 at this time was the head of what's called the Wealth
9 Management Group in Allegiant. We're going to call Art Weiss
10 to the witness stand. It may be tomorrow. At the latest, it
11 will probably be Monday. And we're subpoenaing him to come in
12 here.

13 The subject on the top bullet here is "The Preneed
14 Funeral Trusts Action Requested." So Cleveland, the bank
15 that's taking over the St. Louis bank, is requesting action.

16 "Art, pursuant to our recent telephone
17 conversation" -- so they've had a phone call about this
18 already -- "please accept this e-mail as formal notification
19 to begin proceedings to facilitate a complete exit of all
20 preneed funeral trust arrangements. Get going on getting rid
21 of these trusts."

22 And when National City Bank says to Art Weiss, "Get
23 going," they're going to be the new boss. All right?

24 Headquarters is now moving from St. Louis to
25 Cleveland. And headquarters in Cleveland is saying, "When we

1 take you over, get rid of those."

2 And just think about -- You'll see here the evidence
3 in this. Think about the people at Allegiant Bank. They're
4 all -- in the Trust Department. They're all hoping they get
5 to stay on, you know. They're hoping they get a job after the
6 merger. They know that National City is evaluating every one
7 of them. They're going to send some of their own people down.
8 They're going to look each person in the eye and say, "What
9 have you been doing? Have you been doing a good job here? I
10 want to know what you've been doing."

11 They don't say it that bluntly, but that's what's
12 going on. Nobody at Allegiant wants to thumb their nose at
13 National City Bank. Art Weiss doesn't want to. He'd like to
14 know if he's going to have a job. Herb Morisse, who is the --
15 running the department, he'd like to know. He'd like to know
16 if he has a job, and he ended up staying with National City.

17 "Communications to impacted clients should begin
18 immediately, and all relationships must be closed out prior to
19 the legal closing date of the acquisition, March 31st, 2004."

20 That's a nice way of saying, "Get rid of these things
21 before we close."

22 "Based on our conversations, it's my understanding
23 you have apprised Shaun Hayes of the likelihood of this
24 decision, and he indicated the commercial relationship with
25 the impacted clients has already left the bank." What does

1 that mean?

2 Well, Shaun Hayes was a co-founder of Allegiant Bank.
3 He was the owner of Allegiant Bank. He was the CEO of
4 Allegiant Bank. He was the decision maker that they were
5 going to sell Allegiant Bank to National City. And we've
6 subpoenaed Shaun Hayes to come in and testify on the witness
7 stand. And it may be tomorrow, it may be Monday.

8 You will hear that Shaun Hayes, while he was at
9 Allegiant, was relentless in pushing everybody to sell, sell,
10 sell; "get more accounts, get more customers," because the
11 bank fundamentally is a business. And Allegiant Bank in that
12 way isn't different. They make money loaning money to people.
13 They make money opening accounts for people. They make money
14 charging people for overcharges. They make money in their
15 Trust Department by supposedly watching other people's money.
16 And every week Shaun Hayes told people, "We need more
17 accounts. Get out there and get more accounts." And that
18 included the Allegiant Trust Department.

19 THE COURT: We're going to take a -- take a break.

20 MR. REILLY: You bet.

21 THE COURT: Throughout the course of this trial, I'm
22 going to be giving you an instruction. And probably by the
23 end of it, you'll be able to -- you'll hear it in your dreams
24 because it's the same thing over and over and over, but it's
25 the instruction I'm required to give you. So please bear with

1 me as I do it.

2 Until this case is given to you to decide, you must
3 not discuss the case among yourselves, with others or remain
4 in the presence of anyone discussing it. If anyone should try
5 to talk to you about the case, advise me immediately or as
6 soon thereafter as you possibly can. Do not read, listen or
7 watch any television, radio or news reports of the trial. And
8 the most important thing: Keep an open mind until all of the
9 evidence has been received and you've heard the views of your
10 fellow jurors.

11 This will be a 15-minute recess, and Ms. Berg will
12 accompany you back to the Jury Room at this time.

13 Court's in recess for 15 minutes.

14 (Jury escorted to the Jury Room by the Clerk.)

15 MR. REILLY: Thank you, Your Honor.

16 THE COURT: To those in the gallery, thank you, you
17 know, for your -- being very quiet and not whispering,
18 talking. With lawyers in the well, even the slightest sound
19 is distracting and annoying, and I've noticed that that hasn't
20 happened, and I appreciate it very much. So thank you.

21 Court's in recess.

22 (Court recessed from 10:00 AM until 10:15 AM.)

23 (Jury seated by the Clerk.)

24 THE COURT: Plaintiff ready?

25 MR. REILLY: Yes, sir.

1 THE COURT: Defendant ready?

2 MR. RABER: Yes.

3 THE COURT: Please be seated. You may continue,
4 Mr. Reilly.

5 MR. REILLY: Thank you, Your Honor.

6 I'm just going to finish up this e-mail here again
7 from the first NCB person that came to St. Louis to look at
8 the Allegiant trust era.

9 And Mr. Kantra testifies, and you'll see it on video
10 probably this afternoon, "You know, I was directed by my
11 supervisor to withdraw that e-mail, to unsend it." You'll see
12 his description of that, but it's a little vague as to why.
13 He then says he's not sure -- Even though he admits he pushed
14 the "send" button, he's not sure it got to anybody.

15 One of the things you have the right to do and the
16 power to do is decide who you believe and who you don't
17 believe. The Court will instruct you on how to do that, but,
18 fundamentally, you can use your common sense.

19 Let's go blank for a second.

20 Once Mr. Kantra started telling people at National
21 City Bank that there were problems with the trusts -- And
22 actually Glenn Roper, my partner, pointed out on the break:
23 Remember when I showed you the green and red colors that
24 showed "urgent" and -- and immediate? We didn't add those
25 colors. All right?

1 Those were the colors that Mr. Kantra's Excel
2 spreadsheet had gotten put on by him. So we're not adjusting
3 evidence in any way.

4 Once Mr. Kantra gave the National City Bank people in
5 Cleveland a heads-up, "We better be careful with these
6 trusts," they got their Legal Department involved. And a
7 lawyer named "Plant" started getting engaged in the process,
8 and he hired a law firm to do some looking into NPS, the
9 people at NPS, because they may -- National City might have to
10 keep these trusts if they couldn't find somebody else to take
11 them. And we have his notes because, again, we get to ask for
12 that information. And these are notes that he had of a phone
13 call with the lawyer that he hired to go out and see if he
14 could find out anything about this company called "NPS."

15 And there's some words in here that we didn't write
16 but that were used, and so I want to make sure that you know
17 these are coming from his notes, not ours.

18 Let's show this now.

19 It says, "Missouri AG sued NPS in '92 or '93. Suit
20 was involving a Ponzi scheme. They" -- What does that say?
21 Anybody know?

22 THE JURY: Weren't.

23 MR. REILLY: Weren't. "They weren't" -- Yeah. "They
24 weren't fully funding the trusts at 80 percent of the contract
25 by statute requires -- by statute requires. NPS keep more

1 than 20 percent." I think that means NPS kept more than 20
2 percent. I'll read the rest, and we'll talk about it.

3 "Said that NPS is a group of sleazeballs." There's
4 more to this note. You'll get to see the rest of it, but what
5 this is talking about is that the lawyer at National City Bank
6 found out that there had been a lawsuit by the Missouri
7 Attorney General against this company and that they hadn't
8 been putting 80 percent in.

9 Under Missouri law, when there's a preneed contract
10 written, the seller of that contract, and that's NPS, that's
11 the Cassity company, has to take 80 percent of that money and
12 put it into trust. They can keep 20 percent.

13 That lawsuit was about -- They weren't even doing
14 that initially. That's not what our claim is about, but
15 someone at National City Bank was told that NPS is a group of
16 sleazeballs.

17 Another note that Mr. Plant was given or information
18 was given and then he wrote a note -- And I want to make a
19 distinction here between a "trustee," which is the job they
20 took, and what in a bank is called a "custodian." A custodian
21 just keeps the records. If somebody asks for the money out,
22 they can take the money out. It's still their money. They're
23 just holding it. You can treat it like a savings account,
24 checking account. They're just a custodian of it. Since it's
25 your money, you can take it out.

1 But a trust account only gets taken out if the
2 trustee approves it. So that's what the trustee power is
3 here, to approve whether money goes out. They can say "yes";
4 they can say "no."

5 As I said, you're going to see evidence that 1,026
6 times they were asked to send money out, and 1,026 times they
7 said, "Yes."

8 The lawyer for National City Bank is told that,
9 "Allegiant Bank, more a custodian than a trustee." He's told
10 that they're really not acting like a trustee, and that's what
11 the evidence will show. They were a trustee. They had the
12 name. They had the responsibility. They had the duties, but
13 they didn't act that way.

14 All right. Let's -- Let's move to Allegiant Bank.
15 I'm going to talk about Day One. Allegiant Bank agreed to do
16 business with the Cassitys. All right?

17 This is Allegiant Bank and Trust. And you see a lot
18 of banks are bank and trust, bank and trust. Some banks are
19 just two departments. They have a Loan Department and a
20 bank -- and a Trust Department. Some actually have a company
21 that's a trust company within it. This is a bank and trust
22 company.

23 So we'll see next that they have a President, CEO,
24 Shaun Hayes. All right?

25 This is 1998, the day that they took on the trusts.

1 And as I said, we're going to subpoena Shaun Hayes, and we're
2 going to bring him in. And this is my expectation of what
3 he's going to say.

4 "President and CEO, Allegiant Bank. The NPS, Forever
5 Enterprises relationship began, I believe, with Shawn's
6 relationship with Mr. Cassity, the principal owner of NPS, a
7 privately-owned company."

8 That's a memo from inside Allegiant Bank that this
9 relationship started because Shaun, the President, knew
10 Mr. Cassity.

11 Shaun Hayes denies, when we subpoenaed him under
12 oath, that he knew Doug Cassity was a convicted felon.
13 However, his close friend, I believe his college roommate and
14 the person that he hired later on to take over the Trust
15 Department, will testify that, "Shaun Hayes told me" --
16 Art Weiss will testify; senior member of the Allegiant Trust
17 Committee -- "that Doug Cassity was a convicted felon." He's
18 going to say, "I didn't know it." His friend is going to say,
19 "He told me he was."

20 He will admit, Shaun Hayes, that he was personally
21 notified that none of the Cassity entities were profitable and
22 that their insurance company was losing business. What's that
23 have to do with it?

24 A couple of years after they start this trust
25 business, they were asked to lend more money to the Cassitys.

1 When it was this bank's money going out to the Cassitys,
2 that's when they said "no." They wouldn't lend any more of
3 their own money to the Cassitys. But they let the Ponzi
4 scheme and Missouri consumers continue to buy and buy and buy
5 and buy. And you'll see throughout the case evidence that
6 supports when it's Allegiant Bank's money, when Allegiant
7 Bank's interest is on the line, they protect themselves. And
8 the evidence will show time and time and time again when it's
9 other people's money on the line, like the Missouri consumers,
10 the Missouri funeral homes, they don't protect them at all.

11 Let's show the Loan Department.

12 So we have -- we have a Loan Department in this bank,
13 and then we have a Trust Department. The Trust Department on
14 the first day that the Cassitys' business got taken and
15 accepted by the bank was run by a guy named "Richard Markow,"
16 President of Allegiant Trust Company. Richard Markow was a
17 defendant in this case. We sued him, and we resolved our
18 claim with him. And when we resolved our claim with him, he
19 was required to cooperate with us. We're going to call him as
20 a witness in this case, and he's going to testify about what
21 he knew.

22 We have three boards for Mr. Markow. He was
23 President of Allegiant Trust Company from 1997 to 2001. And
24 then later he was a Senior Vice-President at Bremen Bank and
25 Trust Company from 2003 to 2008, and I'll tell you why that's

1 relevant.

2 "At the beginning of Allegiant's trust period as a
3 trustee from the first day Allegiant took over as trustee, the
4 Allegiant Trust Company had detailed information
5 regarding" ---

6 THE COURT: Can't hear you; can't hear you up here.

7 MR. REILLY: I'm sorry.

8 THE COURT: The court reporter can't hear you.

9 MR. REILLY: "From the beginning" -- "From the first
10 day Allegiant took over as trustee, Allegiant Trust Company
11 had detailed information regarding the relationships between
12 all of the Cassity companies."

13 And now that I've seen that, I should have written
14 "among all of the Cassity companies" because you have --
15 "Between" is two, and if you have three, it's "among." That's
16 my -- my mistake. My wife would catch that. She's a lawyer,
17 too.

18 So what's -- What was meant?

19 What this matters is that the bank knew all about the
20 Cassity interrelated companies. What you're going to see in
21 this case is the Cassitys didn't just own NPS. Then owned
22 these two life insurance companies, and they owned about 20
23 other companies. Most of them are just sham companies.
24 They're just set up so they can move money in and out of the
25 various companies so that somebody can't figure out who's

1 stealing it. That's what they got indicted for in the
2 criminal case. That's what they got convicted of, and that's
3 why they're in prison, but all those companies were known to
4 this bank from Day One.

5 "From the first day Allegiant took over as trustee,
6 Allegiant Trust Company was aware that Doug Cassity served as
7 a Chairman of the companies."

8 Doug Cassity is a convicted felon before they take
9 his business to the bank.

10 And if this bank takes the position, "How could we
11 know that there were going to be crooks in this business, that
12 there were going to be somebody stealing money," they started
13 Day One with knowledge that there was a crook running the
14 business.

15 And the evidence will come in through testimony from
16 somebody named "Tony Lumpkin" who was within NPS. And he's
17 going to say, "You know, all this business that we did,
18 Doug Cassity was running it."

19 And we have a business card for when they met and
20 took on this business. Doug Cassity's business card is in
21 their file. They're going to try and say, "We didn't know,"
22 or they're going to try and say, "We didn't have any
23 involvement with him," but the evidence is going to contradict
24 that.

25 Let's go to the next individual. It's small. I

1 apologize. We'll have a big board of it when we're done.
2 We're building this, and then we'll have a bigger board of it.

3 But the head of the Trust Department is Herb Morisse.
4 That's M-O-R-I-S-S-E. And that's where CPR is supposed to
5 take place. He's the one who's supposed to control the
6 assets, protect the assets and keep records of the activity.

7 In every Trust Department there actually is a vault.
8 They're kind of cool. Lots of Trust Departments have gigantic
9 vaults, vaults bigger than this room, and that's where the
10 assets of a trust are supposed to be kept.

11 In this case, the assets in these trusts, when they
12 took them over, were thousands of life insurance policies. In
13 Missouri, every single contract that a family signs for a
14 preneed contract gets backed up by a life insurance policy.
15 The problem here is the Cassity contract is backed up by the
16 Cassity life insurance company.

17 It is standard procedure that those contracts are
18 kept in the vault of a Trust Department. There should have
19 been stacks of life insurance policies in the vault. And what
20 you're going to hear is that this bank never got a single life
21 insurance policy. If you went through that door and said,
22 "Let's find -- During the six years they were the trustee,
23 let's find the Lincoln Life Insurance policies that are
24 supposedly backing it up, these contracts," none because they
25 let the crooks keep them.

1 And it turns out actually there aren't any life
2 insurance policies. Had they asked for them, they would have
3 been told, "We don't have any. We just have a sheet of paper
4 that says there are." And the bank accepted a sheet of paper
5 each month saying that there were life insurance policies.

6 And the evidence will be from our trust experts that
7 it would be like you bought a car and all you got was the
8 title. You never got the car. That's not appropriate. Those
9 policies should have been in the vault.

10 And the evidence will show that the owner of those
11 policies is the trustees. The bank is the one who's supposed
12 to be the owner of those policies. And instead, they accepted
13 a piece of paper each month that was called "Evidence of
14 Insurance." Never checked to see if they really existed.

15 They're supposed to know, like anybody who owned a
16 life insurance policy, how much is owed on that policy because
17 there's premiums that have to be paid. They're supposed to be
18 paying premiums on it. They have no idea what the premiums
19 are due on any individual policy. And I know that sounds a
20 little vague because there's thousands of policies, but just
21 envision a single consumer and a single policy, if that's all
22 they took the trusteeship on.

23 And they say, well, you know, "Okay; you just sent us
24 Evidence of Insurance. Okay. Where's the policy?"

25 "You're not -- You can't get it."

1 What do we owe on the policy? Because the trust is
2 supposed to pay the premiums. They don't know if they've been
3 paid in full. They don't know if they're paying ten dollars a
4 month. They don't have any records of that. And that was the
5 way that the crooks wanted it set up from the beginning, and
6 that's the way it operated for six years so that the crooks
7 could keep moving the money around within their life insurance
8 company, within NPS, within all these other sham companies.

9 And we'll show you some examples of how the consumer
10 money that's supposed to be here, either in cash or in a life
11 insurance policy, is just flying all over the country among
12 the Cassity Ponzi scheme entities.

13 Let's look at the Cassity scheme. This is the
14 Cassitys, their companies, their cohorts. Doug Cassity,
15 National Heritage Enterprises. He's the Chairman of that
16 company. That's a company that's oversees NPS, the two life
17 insurance companies.

18 Underneath that you see Memorial Service Life
19 Insurance Company. That's the Texas company. Under that, you
20 see NPS in Clayton.

21 Randy Sutton, Randy Sutton was convicted in this
22 related criminal case and passed away in prison recently.

23 Brent Cassity, the son of Doug, convicted for his
24 involvement in this process. We're actually subpoenaing
25 through the Court's order Brent Cassity to trial. He's going

1 to be on that witness stand probably sometime next week, and
2 he's going to admit that all the money that ran through -- the
3 Missouri consumer money that ran through Allegiant Bank was
4 used to allow them to expand into the other states.

5 Lincoln, that's the insurance company. The
6 President's Randy Sutton. See his face appears twice there.
7 He's the President of NPS and he's the President of Lincoln.
8 So they can work the money through the life insurance company
9 any way they want.

10 The bank also accepts David Wulf as part of this
11 scheme. David Wulf is supposedly an investment advisor, but
12 he's part of the scheme. He's in on the scheme. And he's
13 doing time in Terre Haute, Indiana federal penitentiary
14 because of his role here because all he was was a puppet. He
15 did whatever Randy Sutton told him to do, and Randy Sutton did
16 whatever Doug Cassity told him to do.

17 David Wulf worked with a company called "Wulf, Bates
18 & Murphy," and they were supposedly the Independent Investment
19 Advisor here, but the evidence will show that they weren't
20 independent of NPS. They were dependent on NPS.

21 Almost all their business came from NPS. And Wulf
22 not only was an investment advisor for NPS, he was the
23 investment advisor for Lincoln, also.

24 When from Day One Allegiant Bank agreed to be trustee
25 for the Missouri trusts -- Let's go to the next slide.

1 There were -- It was related to a loan or it was
2 connected with a loan from another company called "Forever
3 Enterprises." And the Loan Department loaned Forever
4 Enterprises 2.25 million dollars. That was the first Cassity
5 loan in January of 1998. There were a number of other loans
6 to the Cassitys, but, in essence, Allegiant Bank let this
7 Ponzi scheme into their bank in 1998.

8 On the trust side, the Missouri families and funeral
9 homes were moved into the Trust Department when they said
10 "yes." So the money that they had -- Let's go to the next.

11 Missouri funeral homes went through NPS into the
12 Trust Department through Herb Morisse who's got responsibility
13 to oversee the trust accounts. And those are the five -- I'm
14 sorry -- the seven trust accounts that came in. And those
15 trust accounts, you'll see, are filled with Cassity-related
16 companies. Instead of the consumers' cash being there, it's
17 Lincoln Memorial Life Insurance policies. It's something
18 called a "debenture."

19 In -- In Trust No. 1, you'll see that one has got
20 black in it. Almost all of that money in that trust is -- is
21 Cassity family debentures.

22 A debenture is just an IOU. It's not a very secure
23 loan. And when the money came in like that, our experts will
24 testify you have to ask when you accept that money in the
25 trust: Who's paying on the debenture? Where are -- What's

1 the payment plan? What are -- Have there been any payments?
2 Because that's supposedly an asset of the Trust Department.

3 This Trust Department never asked anything about that
4 particular debenture. And it's all money basically that the
5 Cassitys have taken and written an IOU and said, "We'll pay
6 you back." And there's boatloads of handwritten notes and
7 debentures, promissory notes that the Cassitys are supposedly
8 going to pay money back, and they never paid money back. Or
9 if they paid money back, they made it look like they paid
10 money back, and they take it from somewhere else.

11 I want to talk about Travis Ardrey because,
12 obviously, I'm not making those statements, and you don't have
13 to accept what I'm saying is true, and you don't have to
14 accept what any witness says is true either, but we will put
15 Mr. Ardrey on. He's a Special Agent with the Internal Revenue
16 Service.

17 He'll testify that, "Allegiant transferred millions
18 of dollars out of the NPS trusts to NPS and the other Cassity
19 companies which was never repaid."

20 "Over 25 million dollars in policy loans were taken
21 against Missouri life insurance policies while Allegiant was
22 trustee. These policy loans taken under Allegiant were
23 typically paid off using funds taken from non-Missouri
24 consumers."

25 So they are just using money from another state to

1 pay a policy loan. But when they take that money from another
2 state, that's a person's money that was supposed to be there
3 to pay for their funeral, and that money is gone.

4 Mr. Ardrey will testify, "The Missouri consumer money
5 that was transferred out of the trusts by Allegiant was
6 commonly used to pay premiums on Lincoln policies purchased by
7 non-Missouri consumers."

8 Now they're taking Missouri money and paying life
9 insurance premiums on somebody else.

10 "Allegiant transferred millions of dollars of
11 Missouri consumer money out of the trusts to pay NPS costs
12 associated with the national expansion."

13 When NPS wants to move it to another state, they've
14 got to send some salespeople out there. They've got to find
15 people to hire. They've got to set up shop there. They've
16 got to generate new contract forms for that state. The money
17 from Missouri was being used to fuel, to feed that. It's the
18 economic engine for their expansion in all these other states.

19 "When Allegiant was" -- "When Allegiant transferred
20 the NPS trusts to Bremen in May of 2004, there was a
21 substantial unfunded premium liability."

22 What's that mean?

23 That means when they passed the trusts along after
24 National City Bank told them to get rid of them, the trust was
25 underfunded. There wasn't enough money in the trust at that

1 point to pay for future funerals.

2 And the evidence will be that when they told that
3 next bank, Bremen, how to do it, it was foreseeable that the
4 Ponzi scheme would continue. The Ponzi scheme was already
5 behind. It was foreseeable that new contracts were going to
6 be generated. It was foreseeable that the Cassitys would
7 continue to steal more money.

8 When they took over the Missouri business in 1998 --
9 let's go to the next slide -- there already were thousands of
10 Texas families who had bought preneed funerals from NPS.
11 That's the blue line. The money went to NPS. That money
12 generally didn't go into the Missouri trusts, but it stayed in
13 the NPS Ponzi circle.

14 There was money -- thousands of Illinois families
15 already in NPS; same thing. That money wasn't legally
16 supposed to go into the Missouri trusts, but it was in the
17 Ponzi circle.

18 I'm going to move a little quickly now through the
19 Ponzi scheme. Let me just show you how it works. This is how
20 they did it.

21 This is a consumer. The consumer buys a contract.
22 The money is supposed to go into Allegiant Bank, and it's
23 supposed to be -- Let's go to the next one.

24 When that person's funeral happens, the bank should
25 have the money to pay for the funeral. Instead, that money

1 went back to the Cassitys and their companies. So the
2 consumer's money is gone and not available to pay it.

3 Next?

4 That money comes out of the bank, goes back to NPS,
5 and the Cassitys get it.

6 Let's go to the next slide.

7 Because of this family's money is gone, their loved
8 one's funeral will have to be paid for by another Missouri
9 family's new money. We went over this a little bit, but I
10 want to graphically show you how it happens. And that new
11 money has to come in right away. And that's this light blue.
12 It comes in NPS. It goes in the bank. There's a funeral.
13 It's paid by somebody else because the first consumer's money
14 is gone. And then that happens again when the second
15 consumer's funeral has to happen because that consumer's money
16 is gone. And so new money that just came in, instead of being
17 kept for that person, gets paid -- used to pay somebody else.

18 Let's look to Slide -- Let's go blank for a second.

19 I told you that there were 1,026 times that Allegiant
20 said "yes" to money coming out of the trusts. Let me show you
21 Slide 34. There was a process by which NPS would ask for
22 money. They would send a wire transfer form. This is a Wire
23 Transfer Activity Report. This is January 6th of 2004. The
24 amount: 1.2 million dollars. The customer: Allegiant Trust
25 Company. The originator: Allegiant Trust Company. The wire

1 requested by: That's Herb Morisse. He's the trust officer.

2 Authorization verified: Yes.

3 And when we put Mr. Morisse on the stand, we're going
4 to call him, too. He's going to admit, "We said 'yes' every
5 time. We said 'yes' without looking. We said 'yes' without
6 asking."

7 The next slide.

8 We've assembled the data showing how many times in
9 1998 the crooks asked for money out of the bank. And these
10 are account numbers and amounts and dates, and you can see
11 where the money was sent. Thousands of times.

12 Let's go on to 2000.

13 Next slide.

14 2001, 2002, 2003 and 2004. This period, this last
15 period here, the 2004 period, that's when National City Bank's
16 looking at them and telling them that maybe, you know -- "We
17 want you to get rid of these trusts." And you'll see millions
18 of dollars in that timeframe before the merger is flowing out.
19 The activity gets even worse. This is policy loans that the
20 bank is going to say and claim, "We don't know anything
21 about." We have evidence they did know about them.

22 This is payment in other states of premiums like
23 Mr. Ardrey is going to testify. This is money sent to NPS
24 that allowed Doug Cassity and his family to go on yachting
25 trips, to buy homes in Nantucket, to live a high life.

1 Let's talk about the law for a little bit. I'm sure
2 you're all excited about this part, but it matters. That's
3 why we're here.

4 Missouri Chapter 436 -- Let's go to 52.

5 There is a Missouri preneed law, and it is clear and
6 specific and detailed. The Judge will tell you what it means.
7 We're allowed to put up what it says. I'm not going to
8 interpret it for you. The Judge will give you those
9 instructions. But the statute says, "Trustee of preneed trust
10 to be a chartered financial institution; powers and duties,
11 cost of administration, termination of trust." So this is the
12 section that -- 436.031, this is the section that lays out
13 duties and responsibilities.

14 Let's pull out the next section.

15 "The trustee shall accept all deposits made to it by
16 the seller."

17 Next.

18 "It shall hold, administer and distribute such
19 deposits in trust as trust principal. The trustee maintains
20 adequate records of all payments received."

21 Next.

22 "The trustee shall exercise such judgment and care
23 under the circumstances which men of ordinary "-- and I think
24 it should say "men and women" -- "of ordinary prudence,
25 discretion and intelligence exercise."

1 Next.

2 "In no case shall control of said assets be divested
3 from the trustee." We're -- This is our -- our fundamental
4 point. They didn't keep control of the assets.

5 Next.

6 "Nor shall said assets be placed in any investment
7 which would be beyond the authority of a reasonably prudent
8 trustee."

9 What you're going to see is that the assets in these
10 trusts, 90 percent of them in those different trust accounts
11 were in Lincoln Insurance policies. Ninety percent of the
12 Cassity preneed contracts were in Cassity life insurance --
13 were in a Cassity life insurance company. And this bank,
14 Allegiant Trust, never asked a question about: Who is Lincoln
15 Life Insurance Company? How strong is that company? Who owns
16 that company? What direction is its financial condition
17 going? That's the backing on these contracts; those policies.

18 "The seller of preneed contract" -- that's NPS --
19 "shall be entitled to income." They get to keep income.
20 Eighty percent goes into the trust; twenty percent can be
21 kept.

22 "No such income distribution shall be made to the
23 seller if and to the extent that the distribution would reduce
24 the aggregate market value below the sum of all deposits."

25 And our experts call this the "market value test."

1 They cannot distribute money to NPS if they don't have enough
2 money to pay for the future funerals, and this bank didn't
3 have the data to even do that calculation. The one thousand
4 plus times they sent money out, they didn't have enough money
5 in the trusts to pay for future funerals, and they sent the
6 money out, anyway. And they never ran this test because they
7 didn't have the records to do it because they let the crooks
8 keep the records.

9 "The trustee of a preneed trust shall maintain
10 adequate books of accounts -- of account on all transactions."

11 Let's go to 74.

12 On Day One when they took over these accounts, they
13 knew that there were -- were four trusts. You'll see that in
14 the papers that you get that it's Trust Roman Numeral I, Trust
15 Roman Numeral II, Roman Numeral III and Roman Numeral IV and
16 V. I get confused with Roman numerals, so we've just changed
17 it for the demonstrative purposes here with the numbers.

18 But Trust No. 1, it was invested, almost 95 percent,
19 in Cassity affiliates.

20 Trust No. 2, 95 percent in Cassity affiliates. The
21 blue is other investments. The blue might be real stocks,
22 real bonds; prudent investments. These were not prudent
23 investments.

24 Trust No. 3 had 15 million dollars in assets; a
25 hundred percent in Cassity companies. And what that typically

1 means is they -- they gave them the money, and they wrote a
2 note back and said, "Well, we're good for it."

3 Trust No. 4 the biggest trust, 52 million dollars;
4 vast majority in Cassity affiliates; small sliver in real
5 investments. But what's in Trust No. 4 are Lincoln Life
6 Insurance policies. That's -- That's what they've got listed.

7 When Allegiant started on Day One and accepted these
8 trusts, they should have asked questions about the insurance
9 that they now owned because they became the owner. They
10 should have asked: Who is Lincoln? They should have asked:
11 How strong is Lincoln? They should have asked: Why are the
12 trusts invested solely in Lincoln? And they should have asked
13 questions about the policy. What is the value of the
14 policies? What are the future premiums owed on the policies?
15 Are the policies encumbered, meaning are there loans taken on
16 the policies.

17 When National City Bank came in and was looking at
18 these trusts, they asked those questions.

19 Let's go to the next slide.

20 They looked at what Lincoln Memorial's strength was.
21 They found, "It seems to be financially ailing." This is the
22 bank that's going to take them over, asking the questions they
23 never asked.

24 "It seems to be financially ailing. Lincoln Memorial
25 is not rated by any service. It is 745th in asset rank and

1 its financials have been deteriorating. Its surplus has been
2 reduced by half in the last two years. See the documents on
3 this one."

4 That information isn't hard to get. When they took
5 it over, they could have contacted the rating services. They
6 could have contacted Lincoln and said, "Send us your
7 information." They didn't do any of that. They didn't get
8 the trusts in the -- in the vault. They didn't get the
9 policies in the vault. They didn't evaluate the strength of
10 Lincoln.

11 Let's go to 78.

12 I want to talk about the value of a life insurance
13 policy. This is maybe more than you want to hear, but it
14 matters.

15 If you buy a life insurance policy, and it's a whole
16 life policy, and that's what these -- these policies are
17 supposed to be, you have that policy for your whole life. And
18 if you keep paying and keep paying and keep paying, the cash
19 value grows. If you stop paying, you still have insurance,
20 but you only got what you've paid in so far. But if you want,
21 you can borrow from that policy; take a loan. But if you take
22 a loan, the value of the policy drops.

23 The trusts owned all these thousands of policies.
24 They needed to know what the actual value of them was. Let's
25 just walk through this.

1 If someone pays a thousand dollars, the cash value
2 goes up. If they pay another premium in the policy, the
3 premium goes up -- the value goes up. Another premium, the
4 value goes up. But if they take a loan of a thousand dollars,
5 the value goes down.

6 And what you're going to see in this case is that the
7 trusts never checked to see whether anybody was taking loans.
8 It's their policy. They don't know what they owe. They don't
9 know if anybody was taking loans. The Ponzi scheme group was
10 taking loans. They were keeping money and dropping the value
11 of these policies, and the trustee never checked, never knew.

12 I'm going to show you the size of the loans and the
13 number of the loans that were taken that this trustee never
14 knew on its own policies that it didn't have in the trust
15 vault.

16 86.

17 On January 27th, 1999, there was a policy loan batch,
18 and what the -- what the Cassitys would do is they'd take a
19 little bit of money from each of the policies. This went
20 through the trusts. \$1,027,463.22, represents loans taken on
21 299 Missouri policies. Trustee said, "Sure." They got a wire
22 transfer; "want to take a million dollars out." They said,
23 "Yes." Never asked what policy -- whether it's policy loans
24 or not.

25 September 28th, 1999 -- we're going to move through

1 this chronologically -- another 3 million dollars. It
2 represents loans taken on 3,517 Missouri policies. The
3 consumers in Missouri who bought those 3,517 contracts and
4 have a life insurance policy backing it have no idea that
5 money is being taken out in loans on that policy. They're
6 never told.

7 April 3rd, another one, 2000, another million dollars
8 plus; represents 255 Missouri policies. The trustee says,
9 "Yes;" the consumers don't know.

10 September 29, 2000, another million dollars; 285
11 policies. The trustee says, "Yes;" the consumers don't know.

12 December 10th, 2002, 5.1 million dollars taken
13 against 12,567 Missouri families' policies. I'm not going to
14 say it every time. The trustee says, "Yes;" the consumers
15 don't know.

16 March 25th, 2003, 2.8 million dollars; represents
17 loans taken on 19,890 Missouri policies, 1526 Kansas policies,
18 1113 Arizona policies.

19 November 17, 2003, policy loan batch: 3.3 million
20 dollars; represents 17,000 Missouri policies, 882 Illinois
21 policies.

22 January, 2004, now this is when NCB is in St. Louis,
23 right? They've come down from Cleveland. They're saying,
24 "We're going to take this stuff over; get rid of these
25 trusts." And the trustee is still doing what it always did:

1 Nothing.

2 Another 2 million dollars; represent loans taken on
3 3,157 policies.

4 April, 2004, about a month before the merger between
5 National City Bank and Allegiant, 3 million dollars on 33,536
6 policies.

7 Next page.

8 In the slides -- I'm sorry. In the wire transfers
9 that are sent through Allegiant Trust Department, we see a
10 note here, handwritten note that says "policy loans." The
11 next wire transfer shows policy loans. Another wire transfer
12 shows policy loans. These are documents that came from the
13 Allegiant Trust Department, and Herb Morisse is going to
14 testify that he didn't know that policy loans were being
15 taken; they were.

16 They were going through his Trust Department, and
17 there is notes to that effect. They should have known it. It
18 was their responsibility to know it. It was a failure to do
19 CPR because if they had controlled the assets, they'd know
20 that nobody -- they wouldn't let anybody take policy loans.
21 They'd protect it. They'd record them. If they had those
22 records, they'd know and they'd stop them.

23 Next slide.

24 While Allegiant was trustee, there were more than
25 100,000 policy loans. They affected 53,000 policies. That

1 affected 41,000 contracts. Why that might be confusing, there
2 are some contracts, preneed contracts, that have more than one
3 policy; again, because the Ponzi scheme is manipulating
4 things, but it's not always a one-to-one ratio. So there's
5 41,000 contracts affected. The dollar amount of those policy
6 loans was more than 25 million dollars.

7 The preneed contract that's signed by a consumer when
8 they're signing up to pay for the future funeral is a
9 three-party contract. The consumer signs, NPS signs, and the
10 funeral homes sign. And on each preneed contract Allegiant
11 Bank and Trust's name was on it. And it sets forth language
12 from 436 that says the money is going to be held in trust;
13 every single contract. There were thousands of Missouri
14 consumer contracts. Not only did they not get the policies,
15 they don't get the contracts either. They never saw a
16 contract at any time in the six years they were serving as
17 trustee.

18 The policy loans continued after they transferred the
19 trusts, also.

20 Let's look at 101.

21 After they get rid of the trusts to Bremen, another
22 19 million dollars in policy loans to the next trustee because
23 they did it the same way. And the evidence will be that they
24 were told how to do it.

25 We'll have this board available throughout the trial

1 to keep an eye -- to help you focus on who's who, Shaun Hayes,
2 Markow, Morisse.

3 THE COURT: Would you stand on this side of the
4 board?

5 MR. REILLY: Yes, I'm sorry.

6 And help you get oriented because I know this is a
7 lot of information, a lot of new stuff. But each one of these
8 people are going to be called in to testify; Mr. Hayes,
9 Mr. Markow, Mr. Morisse. And Doug Cassity, we're -- he's
10 going to stay in prison. We're not -- We're not bringing him
11 here.

12 There were a number of suspicious transactions that
13 were run through the Allegiant Trust Department by NPS and
14 others. I'm going to give you some samples. When I showed
15 you those more than a thousand different ones, I'm just going
16 to pull a few out to show you what would have gone under the
17 nose of Mr. Morisse in that Trust Department that would have
18 been approved without question.

19 This is 1.8 million dollars coming into Trust IV on
20 December 10th, 2002. And Trust IV is the biggest trust. It's
21 where all the activity -- most of the activity is where most
22 of the money went through.

23 The next day there's a request to take the 1.8
24 million out of the trust. Allegiant takes the money in one
25 day, sends it out another. Never asks any questions why, and

1 it's 1.8 million dollars. And if you ask Mr. Morisse what it
2 was for, he'll say, "I don't know."

3 Another example: 1. -- \$1,069,263 comes into Trust
4 IV on April 4th, 2000. On the same day they ask for a cash
5 disbursement out for the same amount; no questions asked.

6 Next one: Allegiant allows investments in NPS
7 debentures. This is an IOU. That is, that's all you get.
8 All right? You get this piece of paper.

9 When the bank was bringing in the Cassitys to decide
10 if they were going loan them money, they didn't get just a
11 debenture. They got a first Deed of Trust on their property.
12 They got a promise that -- and a promissory note that if they
13 didn't pay it back, they would have to give it to them. They
14 got the ability to foreclose on their property. They locked
15 them up when their money was being lent out. But when the
16 trust money was being lent out, they just signed a piece of
17 paper.

18 There was a point -- I'm going to go over quickly on
19 this one, but we'll -- we'll show you evidence that there was
20 a point where the Cassitys wanted to borrow more money from
21 the bank, and I mentioned this a little bit. And the bank
22 side, the lending side, thought that all the Cassity companies
23 were losing money. And they said, "We're not going to --
24 We're not going to lend that money out." I think they -- they
25 wanted to build a mausoleum. And the bank -- We have e-mails

1 back and forth. We'll show them to you through the witness
2 stand that show that the bank was saying, "We're not lending
3 them any more money."

4 Then a couple days later, Cassitys sent a request to
5 the Trust Department to get the money out of the consumer
6 funds, and the Trust Department said, "Sure." That's a
7 classic example of them protecting themselves and not the
8 consumers.

9 This next document -- Let's go to 109.

10 It shows that Allegiant -- Allegiant's own documents
11 show that money coming out of Trust IV was used to buy a house
12 for Doug Cassity. We'll get into the detail of it, but that's
13 where consumer money was sent.

14 Another thing that you will see is that there's
15 something called "mismatching." This is an example of a
16 consumer who paid in full. This is from her preneed contract.
17 She paid in full. You see the "PIF" on the right where it
18 says \$8,272.72? All of her money went in to pay off the
19 contract. It was checked paid in full in yellow there. But
20 when the Cassitys bought the policy, they didn't buy a policy
21 in full because they wanted to keep the money and only pay a
22 little bit over time. So they bought what we call a
23 "mismatched policy." Instead of paying the whole premium for
24 the life insurance policy so it's all paid up, they only paid
25 -- they paid over a five-year period, and the annual premium

1 was \$4000. So not only did the crooks keep the money, but the
2 trust was paying far more for life insurance than they needed
3 to because if you take the number of years, five years, times
4 \$4000, that's \$20,000 in premiums. Well, they only got 8000
5 from this consumer.

6 The trust never gets this document. They don't --
7 They never ask about the insurance policy. They never ask
8 about the contract, but it's the perfect evidence for them to
9 see that this thing is running out -- that it's running at a
10 deficit. There's not enough money. And when National City
11 Bank came in to look at the trusts of Allegiant, they got
12 these documents, and they lined them up and they said, "Oh my!
13 That's a red flag."

14 You'll see in the next couple of days as we put on
15 the witnesses for National City Bank that they admit that they
16 found red flag after red flag after red flag within the
17 Allegiant Trust Department. This happened, this mismatching
18 where the consumer pays all the money in at the beginning but
19 a policy is bought that's just installment over time, it
20 happened thousands of times.

21 Let's look at 112.

22 During the Allegiant period, there were 24,000
23 individual families that paid in full on their Missouri
24 contracts. All their money's in. Twenty-one thousand of
25 those were not policies that were paid in full. So millions

1 of dollars that were put in to pay for a policy were kept
2 back, and the policies were paid a hundred dollars over time,
3 a hundred dollars a month, a hundred dollars a month, a
4 hundred dollars a month.

5 Next slide.

6 That shows what the -- what happened in Missouri
7 only. Twelve thousand consumers in Missouri paid in total
8 during the Allegiant period. Eleven thousand of them, they
9 didn't take the money and buy an entire insurance policy.
10 They just bought it over time.

11 Oh, I'm sorry. This is after Allegiant. All right?
12 After Allegiant. So -- Because one of the -- one of the
13 claims we made -- Thank you.

14 MR. POZNER: She is the SDR.

15 MR. REILLY: She is the SDR, that's right.

16 What our claim is: That they're not only liable for
17 the losses, for contracts that were written in their era, but
18 they're liable for the contracts that were written after they
19 gave it up because they didn't warn anybody about the
20 problems, and it was foreseeable that the losses would
21 continue. And that 363 million dollars that we're asking for
22 includes all the contracts written during the six years they
23 were the trustee and all the contracts that were written in
24 the three-and-a-half to four years afterwards before the
25 entire Ponzi scheme crashed.

1 And the law will tell -- The Judge will tell you that
2 the law is that if it is foreseeable that a party's conduct
3 caused the losses, then you can award damages for those
4 losses.

5 The Court's also going to give you an instruction, I
6 believe, at the end of the case that there can be more than
7 one cause of loss, but if the Defendant is one of those
8 causes, they're liable for the losses.

9 And in this case, there may have been other causes.
10 The Cassitys were part of it. They caused some of the
11 problems, but that's not an excuse in a case if you decide
12 that this bank didn't do its job. If it's a cause, they're
13 responsible for the losses under the law. You have to decide
14 whether they were a cause, but they don't have to be the only
15 cause.

16 Let's go to 120.

17 This is another one of the wire transfers. In this
18 one Allegiant wired trust funds to a Cassity company with no
19 explanation; \$112,000 from Trust IV to Forever Enterprises.
20 It was never repaid. It was never asked why. And in this
21 case, we have as a defendant Forever Enterprises. They're a
22 defunct company now. They're not even represented here today.
23 But at the end of the case, we'd ask you that you award the
24 money that we ask from them. It will be far less than the 363
25 million dollars. They're not a major part of our claim, but

1 we'll ask you to do that for claims like this that they never
2 paid on.

3 Next, 121.

4 Here's another wire transfer to a Cassity company
5 with no explanation; 2.6 million dollars from Trust IV to LMS,
6 another Cassity-controlled company; never repaid.

7 Slide 122.

8 \$52,530 to Hollywood Forever; never repaid.

9 Hollywood Forever was a funeral home company in California
10 that one of the other Cassity sons started with money from
11 Missouri consumers.

12 Next slide.

13 We'll show you that Allegiant allowed Trust IV to
14 overpay for stock. They would use Missouri consumer money to
15 pay more on stock than was required. They were forced here or
16 ordered here and agreed to buy Dell stock from Forever
17 Enterprises for \$124,000.

18 Next slide.

19 But the stock that was trading on the open market at
20 that time was only \$43,000; that they just bought it in the
21 stock exchange. Morisse administered both accounts.

22 Allegiant's own accounts show the fraud here. Why would a
23 Trust Department pay, what, three times more the price?
24 Because they're really not looking. They're really not doing
25 their job, but, again, that was a choice. It was a conscious

1 decision that they were going to disregard the rights and the
2 interests of the consumers and the funeral homes and NPS.

3 And I want to make that clear. Ms. Howard here is
4 suing on behalf of NPS and Lincoln and Memorial, but when she
5 does that, she's not responsible for the bad acts that NPS did
6 because that would make no sense. Then every company that
7 went under because of a fraud could never collect from anybody
8 because, "Well, we're not going to try and collect from you
9 because you had fraudsters in it. You had scammers in it."
10 She's entitled to pursue these claims even though there were
11 bad people, criminals engaged in conduct at NPS.

12 126, please.

13 \$40,000 from Trust IV to NPS Iowa you see on the
14 bottom there. Why would Missouri consumer funds be sent to
15 Iowa? That's a question that the evidence will show is never
16 asked by anybody at Allegiant Trust Department.

17 Next.

18 \$600,000 from Trust IV to NPS Texas. Why are
19 Missouri consumer funds being sent to Texas? Never asked.

20 Next.

21 There were times where NPS would terminate Lincoln
22 policies; just shut them down. Allegiant signed off here on a
23 1.2 million dollars' worth of what are called "surrenders."
24 That's what happens when a policy is surrendered. You'll see
25 there's Evidence of Insurance here; 1,156,000. Those are

1 replacement policies purchased by the trusts, but they don't
2 know they're purchasing it. They don't even know what they're
3 doing here.

4 And you'll see below it that there were
5 cancellations; 1.1 million dollars of policies being canceled.
6 There are questions just from looking at this piece of paper.
7 Why are policies being canceled? Why in that amount? What's
8 happening to the money? Never asked.

9 Next, 129.

10 One of the things that NPS did in terms of getting
11 money into the accounts was what were called "rollovers."
12 Some funeral homes around the country and in Missouri, before
13 they dealt with NPS, sold contracts to people in their town
14 and created their own trust fund. So they would keep the
15 money in a bank in their own town. And we have folks from
16 Palmyra, I think, coming in to explain that. NPS would go out
17 to those people and say, "You want to transfer your funds to
18 us? Allegiant Bank will hold the funds. You don't have to
19 worry anymore about managing the funds, keeping them safe."

20 And there were a number of large dollar amounts
21 rolled over out of funeral home accounts into the trust
22 accounts. And that might have meant dozens or hundreds of
23 different people had their accounts moved through their
24 funeral home into Allegiant.

25 In this action here, Allegiant allows rollover funds

1 to be removed from the trusts. They don't change the process.
2 It doesn't matter where the money comes from. If a funeral
3 home in Palmyra sent 2 million dollars in and NPS then said,
4 "We want it," it went out. They got the funds in on Exhibit
5 129. And then on 130, immediately they wired funds out of the
6 trust at the request of Randy Sutton, Angie Hall, and they
7 copied David Wulf and Tripp Bates.

8 I'm not sure what counsel for PNC is going to say,
9 but I know what the witnesses have said for Allegiant.
10 They're going to say, "We could" -- "We did this because
11 Dave Wulf told us to do it. He was the investment advisor.
12 He was an Independent Investment Advisor. He was making these
13 decisions. And as long as he told us that this was okay, we
14 did it."

15 The evidence will show that a trustee is supposed to
16 be sure that investments being made in the trust are prudent.
17 He's supposed to be sure that money sent out of the trusts is
18 being sent for proper purposes. And under Missouri law,
19 David Wulf and his company, Wulf, Bates & Murphy, had to be
20 independent of NPS to justify the trustee following their
21 directions. And the evidence will show that David Wulf and
22 Wulf, Bates were connected with -- inner-connected with NPS.
23 They got their business from them. They took their direction
24 from them. And this carbon copy of his name on here is just
25 rubber stamping the Ponzi scheme.

1 The evidence will be that this trustee never looked
2 into who David Wulf was; never checked to see if he was
3 independent; never made sure that the person who they claimed
4 was telling them to buy Lincoln Life Insurance policies was
5 really being directed by Doug Cassity and Randy Sutton.

6 We went to Terre Haute, Indiana, federal penitentiary
7 to take the testimony of David Wulf.

8 THE COURT: A little louder, please.

9 MR. REILLY: We went to Terre Haute, Indiana to take
10 the testimony of David Wulf who was convicted of the crime for
11 his role in this, and I'm going to show you some summary of
12 his testimony. But you can see we're talking about this
13 criminal case. There were six criminal cases. That's a
14 different case than this case. We're not asking for anybody
15 to go to prison. We're only asking for the bank to pay what
16 damages it caused.

17 But there's parts of that case that matter here
18 because in that case you'll see the indictments. You'll see
19 the plea bargains that people entered in that case. The
20 Federal Government wasn't looking at Allegiant Bank from a
21 criminal standpoint. They didn't make any charges against
22 them. We're not suggesting they should have.

23 This is a civil lawsuit. The Court will tell you the
24 difference between those two lawsuits, but one of the main
25 differences is in this case, our burden of proof is for us to

1 convince you, to show you that the bank didn't do its job,
2 that it caused losses, and that the losses were substantial.
3 It is what's called the "weight of the evidence." In a
4 criminal case, you have proof beyond a reasonable doubt.
5 Here, we just have to balance it in our favor. That's the
6 main distinction.

7 THE COURT: A little louder. Your -- Your voice is
8 fading away.

9 MR. REILLY: Okay. Thank you. Maybe it's telling me
10 something.

11 THE COURT: Well, the court reporter is telling me
12 something.

13 MR. REILLY: May I have a moment, Your Honor?

14 THE COURT: Yes.

15 (Pause)

16 MR. REILLY: In the criminal case, in the indictment
17 and in the plea bargains, including Brent Cassity's plea
18 bargain, it says that the Federal Government found the people
19 learned or knew that David Wulf wasn't independent of NPS. We
20 believe the evidence will show and confirm that in this case.
21 And if they're not -- If it's not independent, then they get
22 no protection for following his instructions.

23 David Wulf, I believe you will see, is not to be
24 believed. He says multiple different things at multiple
25 different times about the same subject. At times he says, "I

1 was not making investment decisions." At times he says he was
2 making investment decisions. He's handed affidavits before he
3 went to prison by the lawyers for NPS, lawyers who went to
4 prison; a lawyer went to prison. He signs whatever is put in
5 front of him. He does whatever he's told to do, and we don't
6 put any credence in what he says. So we did not subpoena him
7 to come and not tell you the truth.

8 But we do have a videotape of his testimony. Can you
9 see that?

10 Your Honor, I'm just going to move over and slide
11 this over a little.

12 THE COURT: All right, sure.

13 MR. REILLY: "Wulf, Bates & Murphy's Procedures for
14 the NPS Trusts."

15 "Randy Sutton directed all wire transfers out of the
16 NPS trusts during Allegiant's period as Trustee."

17 He's saying, "I wasn't doing that. Randy Sutton was
18 doing that."

19 "David Wulf understood that Randy Sutton and
20 Allegiant reached an agreement whereby Wulf, Bates & Murphy
21 would have limited or no involvement in the NPS trusts."

22 That one seems to be true. He's just acting at the
23 direction. Randy Sutton and the Cassitys directed Wulf to
24 sign various letters of direction.

25 "David Wulf believed he lacked the authority to tell

1 Randy Sutton and the Cassitys 'no' when he directed Wulf to
2 sign these letters of direction."

3 "David Wulf believed he lacked the authority to tell
4 Randy Sutton and the Cassitys 'no' when they wanted money
5 wired out of the trusts."

6 The evidence will show that even though David Wulf
7 doesn't tell the truth in a lot of things, that's pretty much
8 the truth.

9 "The evidence will show that Wulf, Bates & Murphy
10 never managed a single life insurance policy asset of the NPS
11 trusts and never considered the individual Lincoln policies to
12 be under their management."

13 Again, why am I showing this? Because the trustee,
14 Morisse, said, "I did this because Wulf told me."

15 "Wulf, Bates & Murphy never directed, recommended or
16 even knew about the individual policy premium terms because
17 the premiums were too complex for David Wulf."

18 He says, "I'm not a life insurance guy. I don't
19 understand life insurance."

20 "Wulf, Bates & Murphy never directed or had any
21 involvement with the practice of mismatching of payment terms
22 between consumers' preneed funeral contracts and the Lincoln
23 Life Insurance policies."

24 He's not doing that process when they collect all the
25 money from the consumer but only pay part of it to buy the

1 life insurance policy.

2 "Wulf, Bates & Murphy received no information on the
3 individual life insurance policies associated with the NPS
4 trusts."

5 The other crooks kept David Wulf out of the life
6 insurance issues, just like they got the trust to agree they
7 weren't going to be any part of it either.

8 Your Honor, if I could just ask for a minute, I'm
9 going to -- I will finish before noon, but if I could have a
10 minute here, I may be able to cut through some things.

11 THE COURT: All right.

12 (Pause)

13 THE COURT: If anyone on the jury wants to stand and
14 stretch, feel free to do that.

15 MR. REILLY: We're not using every one of these.

16 THE COURT: Just one -- Just one second.

17 (Pause)

18 THE COURT: Okay.

19 MR. REILLY: It will be undisputed in this case that
20 Allegiant was the trustee. The Cassitys were never trustees
21 in this case. They were never state regulators, were not
22 trustees. They didn't have responsibilities to protect the
23 money of the consumers. The only party, the only defendant,
24 the only company that had fiduciary duties was this trustee
25 that we're suing.

1 The criminal indictment makes comments about
2 David Wulf.

3 Let's go to 137.

4 This is a section called "Use Of An Investment
5 Advisor Whose Independence Was Compromised." This is the
6 Federal Government against Randall Sutton, Defendant Sharon
7 Nekol Province, James Douglas Cassity, Brent Cassity,
8 Howard Wittner who was the lawyer for the Cassitys, Defendant
9 David Wulf and other persons known and unknown to the
10 Grand Jury; "caused National Prearranged Services, Inc., to
11 make the materially false and fraudulent representation that
12 Wulf, Bates & Murphy, Inc., of which Defendant Wulf was Chief
13 Executive Officer, was an Independent Investment Advisor."

14 The Government found or alleged that he was not.

15 Let's go to the next slide.

16 In the paragraph following that, this says that those
17 defendants obtained access to the funds which were held in
18 trusts for purchasers of prearranged funeral services from
19 National Prearranged Services, Inc. They're just confirming
20 that it got access to the funds out of the trusts.

21 Next.

22 Talking about a 1999 agreement; Wulf, Bates & Murphy,
23 National Prearranged Services and Allegiant. So this is a
24 signed document between the Bank Trust Department that we're
25 suing, the crooks at National Prearranged Services, and Wulf,

1 Bates. They're supposedly an Independent Investment Advisor.
2 They entered into a written agreement to transfer custody of
3 all life insurance policies obtained with money provided by
4 the persons who purchased prearranged funeral contracts.

5 They were already doing this in 1999. They already
6 didn't have custody of the policies in the vault.

7 Herb Morisse, the trust officer, wrote this letter, and they
8 decided, "We're going to write it up so it says it's okay that
9 we don't have the policies." And they're going to say, you
10 know, "We -- We believe that we were told to write that letter
11 up by regulators." The evidence will be very slim that
12 supports anything like that. You can hear the evidence and
13 judge it, whether you believe that.

14 But in the indictment, "This agreement violated the
15 requirements of Missouri law that all property in preneed
16 trusts shall be held, administered and invested by the trustee
17 and circumvented the laws governing prearranged funeral
18 contracts by permitting the seller of prearranged funeral
19 contracts to acquire possession of the funds provided by the
20 purchasers of such contracts."

21 Our expert witnesses will come in and testify they
22 agree with that. This agreement of November 1st, 1999, which
23 we call the "Custody Agreement," violated the obligations of
24 the trustee to keep control of the assets.

25 Next slide.

1 This is the Custody Agreement that we're talking
2 about. Herb Morisse will admit under oath that he drafted it.

3 Next slide.

4 There's another letter around that same time,
5 November 5th, 1999. David Wulf, who's a criminal defendant in
6 this criminal case, sent a letter to the President of
7 Allegiant Trust Company which provided that Allegiant Bank
8 "take direction from representatives of either Wulf, Bates &
9 Murphy or NPS Services, Inc., with regard to depositing and
10 distribution of assets and settlement of trades."

11 Here's a setting where Wulf, Bates, who supposedly is
12 giving investment direction, is saying, "You know what? I'm
13 going to sign an agreement that says that if the crooks tell
14 you send money out of the trusts, you can do it. Okay?"

15 And they sign it; the bank signs it. This letter
16 also violated Missouri law because it permitted National
17 Prearranged Services, a seller of prearranged funeral
18 contracts, to control and manage the property obtained from
19 purchasers in prearranged funeral trusts which it established.

20 Our experts will confirm that, in their view, this
21 letter signed by the bank violated the obligations, fiduciary
22 obligations, of Allegiant Bank by giving NPS the rights to
23 direct the assets in the trusts. It gave them the control.
24 It violated the "C" of CPR. It violated the "P" of CPR
25 because they ended up buying Lincoln policies. And it

1 violated the "R" of CPR because it allowed the crooks to keep
2 the records.

3 Next slide.

4 This is the letter -- This is the Wulf letter that
5 allows them to -- "for NPS to distribute any cash securities
6 or other assets from any of the above-referenced trust
7 accounts in accordance with any directions received by
8 Allegiant Bank by fax, telephone, or in person from a
9 principal, officer, employee, agent or representative of Wulf,
10 Bates & Murphy or" -- and that's the key -- "or National
11 Prearranged Services, Inc."

12 NPS should not have had the ability to tell this
13 trustee to send money out of the trusts.

14 These are the two eras that we're asking you to award
15 damages on in this case. This is the Allegiant trustee
16 period. \$146,809,281 of contracts that were sold around the
17 country during the Allegiant period.

18 After they transfer the trusts to Bremen, without
19 warning them about the problems, without telling them that
20 they had found all kinds of red flags, and instructing them to
21 do the business the same way, there were another 216 million
22 contracts sold.

23 Mr. Markow, who was the trust officer in Bremen Bank
24 when they accepted the trusts from Allegiant, will testify
25 that had he been told about the problems that National City

1 Bank knew about, about the red flags that National City Bank
2 had found, that the fact that the trust was being mishandled
3 by Allegiant, they never would have taken the trusts on. And
4 as a consequence of that, everything could have been stopped
5 and should have been stopped in 2004. Instead, from 2004 till
6 2008 when the Ponzi scheme collapsed, another 200 million
7 dollars of consumer money was lost. More contracts were
8 written all over the country. More policies were issued.
9 More contracts were mismatched, and the losses piled up for a
10 total of 363 million dollars.

11 This case is about this amount of money and the
12 multiple times that this bank could have stopped those losses.

13 Let's go to No. 8.

14 National City Bank discovered and was told that what
15 the Cassitys were doing was a Ponzi scheme. They found that
16 out in a matter of a couple of months. They found out that
17 the people or that there were people at NPS who were
18 sleazeballs. They found that out in a couple of weeks. This
19 bank either knew it or should have known it in that same
20 timeframe. They either knew it when they knew that
21 Doug Cassity, a convicted felon -- By the way, the ---

22 THE COURT: You're really getting into argument.

23 MR. REILLY: All right.

24 THE COURT: Please wrap it up.

25 MR. REILLY: Okay, sure.

1 The evidence will show that this information was
2 knowable to Allegiant Bank Department throughout the six years
3 that they were serving as trustee.

4 When you get to the end of the case, in addition to
5 those factors that you have to decide, whether they did their
6 duty, whether they caused injury and what the amounts are,
7 we're going to also ask you to consider that this -- and
8 determine whether you think that this conduct was a conscious
9 disregard of the rights of others; determine whether this was
10 not a mistake but a choice and that there were multiple
11 choices made every step of the way, and that for five years
12 there were opportunities for Allegiant Bank to not let money
13 flow out. Thousands of opportunities to stop the Ponzi scheme
14 that they didn't take. And at the end of the case, we'll ask
15 you to consider ---

16 Oops! That's a slide, I guess. What's the number?

17 We'll ask you to consider punitive damages against
18 this Bank Defendant. And the Court will instruct you as to
19 what punitive damages are for, but they are generally to
20 punish this bank for its conduct and to keep -- we got two
21 "keeps" in there actually -- but to really keep others from
22 doing the same thing. And we'll ask you for each year that
23 Allegiant Bank was the trustee and had an opportunity to stop
24 this Ponzi scheme and stop these losses, that you multiply
25 whatever the compensatory damage award is times five to send a

1 message to this bank and others that this conduct is not
2 acceptable.

3 I thank you for listening to me for all morning. As
4 we said, everything we tell you is because we want to make
5 sure you understand it, and the evidence will start this
6 afternoon sometime after bank counsel has completed their
7 statements. I have -- I'm sure that I haven't covered
8 everything. I'm sure that they'll indicate that there's
9 things that I didn't say, but be sure that anything they
10 address we'll bring up through that witness stand and through
11 the exhibits that we'll show you.

12 Thank you very much.

13 THE COURT: We're going to be taking the lunch
14 recess.

15 Again, do not discuss the case among yourselves or
16 with others or remain in the presence of anyone discussing it.
17 If anyone should try to talk to you about the case, advise me
18 immediately.

19 Do not read, watch or listen to any radio, television
20 or news reports of the trial. Keep an open mind until all of
21 the evidence has been received, and you've heard the views of
22 your fellow jurors.

23 Court's in recess for one hour. We'll be back at
24 1:00; an hour and five minutes.

25 (Jury excused from the courtroom.)

1 THE COURT: Court's in recess. We're going -- The
2 personnel will be moving these tables. Should that be --
3 Should we wait until after you've finished your argument?

4 MR. RABER: Yes, Your Honor, because you may
5 remember, we're going to set up a timeline here.

6 THE COURT: Yes, that's correct. Okay. We shall
7 wait until after that occurs.

8 Would you notify Betty upstairs, Melanie, and also
9 have her call John and Adam and tell them to hold up until
10 after ---

11 THE CLERK: Already done; they're pushed back.

12 THE COURT: Okay, good. Thank you.

13 MR. RABER: Your Honor?

14 THE COURT: Yes, go ahead.

15 MR. RABER: Just a quick question.

16 When I'm giving my opening, it's going to be quite
17 distracting to have three people between me and the jurors.

18 THE COURT: Sure.

19 MR. RABER: I'm wondering if there's a way that these
20 folks can be rearranged a little bit so that I don't stumble
21 going to the board and -- and have to speak over three people?

22 THE COURT: Can you accommodate that?

23 MR. REILLY: We'll accommodate. I'd like to stay
24 here. Can I stay here?

25 MR. RABER: Sure.

1 MR. REILLY: Okay. We'll clean up.

2 MR. RABER: Okay. Thank you.

3 THE COURT: All right.

4

5

6 (Court recessed for the lunch hour from 11:55 AM
7 until 1:00 PM. Whereupon, Shannon White resumed the court
8 reporting duties for the afternoon session.)

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CERTIFICATE OF OFFICIAL REPORTER

I, Deborah A. Kriegshauser, Federal Official Realtime Court Reporter, in and for the United States District Court for the Eastern District of Missouri, do hereby certify that pursuant to Section 753, Title 28, United States Code, that the foregoing is a true and correct transcript of the stenographically-reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Dated this 5th day of February, 2015.

/s/ Deborah A. Kriegshauser

DEBORAH A. KRIEGSHAUSER, FAPR, RMR, CRR
FEDERAL OFFICIAL COURT REPORTER